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Analysis of Background Check Policy in Higher Education

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ACCEPTANCE

This dissertation, AN ANALYSIS OF BACKGROUND CHECK POLICY IN HIGHER EDUCATION, by GREGORY T. OWEN, was prepared under the direction of the candidate's Dissertation Advisory Committee. It is accepted by the committee members in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the College of Education, Georgia State University.

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ABSTRACT

ANALYSIS OF BACKGROUND CHECK POLICY IN HIGHER EDUCATION

by
Gregory T. Owen

In the higher education environment today, lack of agreement about background checks between campus community members, fueled by unresolved tensions between security and privacy, has led many universities to adopt a patchwork of fragmented background check policies. Many of these policies have been created and accepted without careful consideration of the wide array of risks and complexities involved with background checks. This policy analysis examined the experiences and history behind Georgia Institute of Technology's adoption of background check policy. This was achieved through interviewing relevant constituents and analyzing of all available/related official policy documents associated with Georgia Tech's Pre-employment Background Check Policy and Program. This dissertation presents a chronological account of the events and influences associated with Georgia Tech's adoption and revision of background check policy. Results of this study offer valuable insights and recommendations for further study in order to assist higher education policy makers and HR professionals at other universities in making more informed decisions regarding the challenges involved with background check, and similar, policy. Some of these insights include an awareness of societal tensions that exist between privacy and security policy; the importance of understanding how national, local, and organizational level triggering events have shaped and contributed to higher education background check policy that is based on a general concern for security; and my recommendation for further study into background check policy as it will relate to the higher matriculation process.

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IN HIGHER EDUCATION

by
Gregory T. Owen

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ABBREVIATIONS

BOR	University System of Georgia, Board of Regents
BIC	Background Investigation Committee
CBC	Criminal Background Check
EEOC	Equal Employment Opportunity Commission
FCRA	Fair Credit Reporting Act
FERPA	Federal Educational Rights and Privacy Act
FTC	Federal Trade Commission
Georgia Tech	Georgia Institute of Technology
HIPAA	Health Insurance Portability and Accountability Act
OHR	Georgia Tech Office of Human Resources
Policy 8.1	Georgia Tech HR Policy 8.1 “Background Checks”

CHAPTER 1

BACKGROUND CHECKS IN HIGHER EDUCATION

Introduction to the Study

The purpose of this policy analysis was to examine the experiences and history behind Georgia Institute of Technology's (referred to as Georgia Tech throughout the remainder of this dissertation) adoption of background check policy. Specifically, I sought to understand early influences and what was learned and improved as the policy evolved and changed. This was achieved through interviewing relevant constituents and analyzing of all available/related official policy documents associated with Georgia Tech's Pre-employment Background Check Policy and Program. Through a deep understanding of background check policy at Georgia Tech, my study offers valuable insights for other higher education policy makers and HR professionals in making more informed decisions regarding the challenges involved with background check, and similar, policy.

This first chapter is comprised of: (1) My opening statement that captures the context and background framing my study within its specified area of inquiry; (2) An introductory discussion of background check policy specifically at Georgia Tech; (3) An introductory discussion on the relevancy of debates surrounding privacy vs. security. After these introductory discussions this chapter concludes with my Statement of the Problem, Purpose of the Study, and Research Question. The remaining roadmap of this entire dissertation includes the following chapters: (2) Review of the Literature; (3) Policy and Privacy Law; (4) Initial Research Approach, Methodology, and Method; (5) Data Inventory & Analysis Technique; (6) Policy 8.1: Data and Analysis; (7) Summary and Final Comments.

Opening Statement

In the current higher education environment there exists controversies over campus safety and security policy. Policy debates often emerge regarding what (and how much) security is needed to keep campuses safe while at the same time respecting, as much as possible, the privacy of staff and students. Fueling these debates are recent violent campus incidents involving students and/or staff. As a direct consequence of the April 2007 Virginia Tech campus shootings, the Department of Education revised the Federal Educational Rights and Privacy Act (referred to as “FERPA” throughout the remainder of this dissertation). Announced in December 2008 and effective as of February 2009, “the new rules try to strike a better balance between privacy and safety.”¹ These new FERPA rules may help moving forward; however, unresolved campus tensions between privacy and security still exist. These tensions have led some campus communities toward adopting a patchwork of fragmented background check policies that do not include careful consideration of the wide array of risks and complexities involved with background checks.

For many years, the use of extensive background checks in the business-corporate sector has included pre-employment investigations of private information such as criminal histories, driving records, and personal credit. According to a Society for Human Resource Management (SHRM) report, from 1996 to 2004, the frequency of these investigations has increased.² In 2010, SHRM followed-up with similar surveys that reported very close results

¹ Peter Lake, "Student-Privacy Rules Show a Renewed Trust in Colleges," *Chronicle of Higher Education* 55, no. 22 (2009): A72.

² Evren Esen, *SHRM Workplace Violence Survey*. Alexandria, VA: Society for Human Resource Management, 2004. Survey Report. “In June 2003, the Society for Human Resource Management (SHRM) conducted the Workplace Violence Survey to determine the prevalence of violence in today’s organizations, the steps companies take to prepare for and prevent violence, and how they deal with the aftermath of violence.” (P. IV) “How do organizations investigate the backgrounds of potential employees? Figure 17 depicts these results. Reference checks (80%), criminal background checks (80%) and previous work history (79%) are the most common methods according to HR professionals. The percentage of organizations that

compared to 2004. The 2010 report indicated that 80% of organizations conducted criminal history searches, 76% of organizations conducted reference checks, and 79% conducted drug testing for either all job candidates offered positions, selected candidates for safety sensitive positions, or when testing was required by law.³ Credit histories are used more infrequently than the above mentioned background checks. According to the 2010 SHRM report on credit histories only 13% of organizations surveyed conducted credit histories on all job candidates. Of the organizations surveyed, 91% reported only using credit histories primarily for positions with a fiduciary duty.⁴

The American Association of University Professors (AAUP) released a public statement on background checks in March 2004, which addressed several significant questions and problems surrounding the perceived need for, and use of, extensive pre-employment background checks in higher education.⁵ The release of this 2004 statement was strong evidence that the topic had entered the mainstream of higher education policy issues. In a more formal follow-up regarding its stance on the topic, the AAUP, in the fall of

perform criminal background checks in 2003 is up from 51% in the 1996 survey. More employers are using credit checks in 2003 (35%) compared to in 1996 (19%). These efforts show that organizations are using a host of ways to check up on new employees they intend to bring into the workplace." (For more specifics and this quote see figure 17 on p. 19 of this SHRM Report).

³ Society for Human Resource Management, 2010 Survey Reports. See full Criminal History Report at: <http://www.shrm.org/research/surveyfindings/articles/pages/backgroundcheckcriminalchecks.aspx> Internet; accessed 26 April, 2012. See full Reference Checking Report at: <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/ConductingReferenceBackgroundChecks.aspx> Internet; accessed 26 April, 2012. See full Drug Testing Report at: <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckDrugTesting.aspx> Internet; accessed 26 April, 2012.

⁴ Society for Human Resource Management, 2010 Survey Reports. See full Credit History Report at: <http://www.shrm.org/research/surveyfindings/articles/pages/backgroundcheckingimplications.aspx> Internet; accessed 26 April, 2012.

⁵ Matthew W Finkin, Robert C. Post, and Judith J. Thomson, "Verification and Trust: Background Investigations Preceding Faculty Appointment." *Academe* v90, no2 (2004): 113-114. This AAUP statement highlights the many, usually unquestioned and unaddressed, concerns surrounding the consideration to conduct extensive background checks at a higher education institution. One of the main foci of this study is exploring the concerns brought forward in this statement as well as their competing arguments.

2006, published an updated *Policy Documents and Reports* (widely known as the Redbook in the academic community). In this tenth edition, the Redbook included the 2004 statement regarding background investigations preceding faculty appointments (making it a permanent addition to the AAUP Policies and Reports).⁶

In *The Chronicle of Higher Education*, Smallwood and Vinik have also emphasized the importance of the topic. In September 2003, Smallwood released the story of Paul Krueger. Paul Krueger was a Pennsylvania State University professor with multiple murder convictions in his criminal history which were unknown to several of his past higher education employers. The events surrounding Krueger served as one of the major catalysts sparking debates about whether criminal history searches are appropriate in higher education.⁷ In a more recent report (May 2005), Vinik highlighted three main factors contributing to the growing support for extensive pre-employment background checking in higher education.⁸ Factor one is improved use and availability of electronic data-collection techniques, making it quicker and easier to obtain personal information on applicants. Factor two is a change in the legal atmosphere due to high-dollar judicial verdicts against organizations and institutions for negligent hiring.⁹ These verdicts have forced employers to

⁶ American Association of University Professors, *Policy Documents & Reports* 10th ed. (Washington, D.C.: American Association of University Professors, 2006), 51-53.

⁷ Scott Smallwood, "The Price of Murder: A Triple Homicide Haunts a Professor Who Thought He Had Already Paid for His Crime," *Chronicle of Higher Education*, v50, no. n3 (2003): pA8. Paul Krueger held several higher education academic positions, including visiting professor at Idaho State University, assistant professor at Augustana College, and assistant professor at Penn State. Krueger was convicted of murder in Texas during his teenage years and served thirteen years in a state penitentiary. See full story for detailed personal interviews and quoted statements from Krueger regarding the events. This event was perhaps the most high-profile incident of a person slipping under the radar of the screening mechanisms of the academic guild.

⁸ Frank D. Vinik, "Why Background Checks Matter in Academe" *Chronicle of Higher Education*, 51, no. 38 (2005): B13.

⁹ For a comprehensive review of the legal concerns surrounding negligent hiring see Rodolfo A. Camacho, "How to Avoid Negligent Hiring Litigation," *Whittier Law Review* 14, no. 4 (1993): 787-807.

become more conscious of potential liability. Factor three is a major social shift triggered by the terrorist attacks in New York City on September 11th, 2001. After this event “people are accepting greater intrusions into their privacy if it helps protect their communities.”¹⁰ These technological improvements, judicial decisions, and social changes have strengthened support for extensive pre-employment background check policy in higher education, but the AAUP has warned of several concerns that warrant attention. First, these types of searches can be “highly invasive of an applicant’s privacy and potentially very damaging.” Second, “the probative value of criminal records is often small because such records are notoriously imprecise.” Third, the AAUP does recognize that incidents of faculty credential misrepresentation are “not totally foreign in higher education,” but “such sensational incidents are fortunately few.” And, most important, the AAUP states that “this interest in background checks has arisen despite the absence of any systematic study of the need for the information such checks might produce.”¹¹

Background Check Policy at Georgia Tech

During the summer of 2005, Georgia Tech implemented the Georgia Tech Human Resources Background Check Policy 8.1 (referred to as “Policy 8.1” throughout the remainder of this dissertation). Policy 8.1, at that time, required a mandatory pre-employment background check for a select group of part-time and full-time classified, non-faculty, positions. Two years later background check policy was on the agenda of the annual University System of Georgia Board of Regents (BOR) fiscal affairs meeting held June 17-

¹⁰ Frank D. Vinik, "Why Background Checks Matter in Academe," B13.

¹¹ Matthew W Finkin, Robert C. Post, and Judith J. Thomson, "Verification and Trust," 113-114.

20th, 2007. In the meeting summary, William Bowes reported that the BOR sanctioned a university system-wide initiative compelling every public higher education institute in Georgia to adopt a pre-employment background check policy (which included all faculty and staff hiring).¹² These initiatives were strong examples that the use of extensive pre-employment background checking was taking a firm hold in higher education.

The Privacy vs. Security Debate

Many of the controversies about background checks in higher education are centered around, or are related to, privacy and/or security. Therefore, this dissertation would be incomplete without discussion of these two topics. However, it is important to note that security and privacy (especially privacy law) are both elaborate subjects. This dissertation focused specifically on a single background check policy at one higher education institution. Therefore, my discussions on security, privacy, and privacy law were limited only to the most relevant aspects of these topics as each related to the focus of my study. Further review/examination on privacy and security would be better left to studies devoted individually to each of these complex topics.

Statement of the Problem

Policy Based on Fear

Currently a climate of fear looms over campuses given recent high-profile campus tragedies involving staff and/or students. Examples include the 2007 Virginia Tech massacre, the 2008 Northern Illinois shootings, and the more recent 2010 story of Amy

¹² William R. Bowes (Vice Chancellor for BOR fiscal affairs), *Fiscal Affairs Issues, CBO Annual Meeting (University System of Ga.)* St. Simons Island: University System of Georgia, 2007.

Bishop, a University of Alabama professor who shot and killed three of her colleagues during a faculty meeting.¹³ In the wake of these events, campuses nationwide have exerted elaborate change efforts, including more sophisticated campus emergency response systems, increased crime prevention techniques, and, of course, adoption of background check policy. However, as asserted by the AAUP this increased attention to background checks has arisen during an absence of systematic studies regarding the need for the information such checks might produce.

James Fox reminds us that in the wake of tragedies like Virginia Tech and Northern Illinois, our society “often embraces, and even demands, extreme responses to extreme and aberrational behavior.” Such actions, “in hindsight, are not always prudent” and can sometimes open organizations to more, rather than less, potential harm or danger.¹⁴ For example, in 2009 Hughes, Hertz, and White reported that U.S. higher education is “at the early stages of implementation of more comprehensive criminal background check policies and procedures on campuses.” Without careful consideration of the wide array of risks and complexities involved with background check policy, standard procedures could lead to a “fragmented approach.”¹⁵

A fragmented approach to the CBC [criminal background check] process, in terms of policy, process and evaluation procedures, suggests that many institutions of higher

¹³ The details and importance of these events are discussed further in the literature review of this dissertation.

¹⁴ James Alan Fox, "Fueling a Contagion of Campus Bloodshed," *Chronicle of Higher Education* 54, no. 25 (2008): A36.

¹⁵ Stephanie Hughes, Rebecca J. White, and Giles Hertz, "Criminal Background Checks in U.S. Higher Education: A Review of Policy Developments, Process Implementations and Post-Results Evaluation Procedures," Unpublished Manuscript, 2009. This manuscript is a copy of the authors' report of their online survey designed to provide "an updated view of the policy developments, process implementations, and post-results evaluation procedures of those colleges and universities employing criminal background checks as a risk mitigation tool." p. 20 The goals of this manuscript are perhaps the closest I have found within the literature that align with the goals of this dissertation.

education may be vulnerable to a host of civil liability claims. As such, these institutions need to develop more consistent and comprehensive approaches to mitigating their risk, and do so without delay.¹⁶

Hughes, White, and Hertz also report that as of 2007, forty-two percent of surveyed higher education human resource professionals indicated that their campuses utilize criminal background checks on all types of employees, while the AAUP argues for an assessment of the call for criminal background checks based on a “principle of proportionality.”¹⁷ As stated by Finklin, Post, and Thomson, a principle of proportionality “prohibits the adoption of a general policy of searching for criminal records, if any, of all applicants for all faculty positions.”¹⁸ This lack of agreement between campus community members has influenced many universities to “adopt a patchwork of policies” covering background checks. This leads to “a lack consistency in application” among the wide variety constituencies on university campuses.¹⁹

Lack of Systematic Peer Reviewed Studies

My searches within the literature support the AAUP’s claim regarding a lack of sufficient systematic studies about background check policy in higher education. Cooper, Fusarelli, and Randall agree that even with the increase of research on policy implementation processes in the 1960s and 1970s, more recent interest in policy implementation has

¹⁶ Ibid., 26.

¹⁷ S. Hughes, R.J. White, & G. Hertz, "Best Practices in Background Check Policy Development, Utilization, and Evaluation." 2007. Cited in Stephanie Hughes, Rebecca J. White, and Giles Hertz, "A New Technique for Mitigating Risk on US College Campuses," *Journal of Higher Education Policy and Management* 30, no. 3 (2008): 309-318.

¹⁸ Finklin, Post, and Thomson, "Verification and Trust," 113-114.

¹⁹ Stephanie Hughes, Rebecca J. White, and Giles Hertz, "A New Technique for Mitigating Risk on US College Campuses," *Journal of Higher Education Policy and Management* 30, no. 3 (2008): 309-318.

noticeably declined in the past approximate twenty years. Much of the research that does exist on policy implementation “fails to consider the origins of policies, an important factor affecting successful implementation.” Cooper, Fusarelli, and Randall further espouse that traditional policy studies often become entrenched in a “fallacy of presentism” - the tendency in policy studies to ignore the effects of past policies and their programmatic, institutional, cultural, and organizational histories.”²⁰ Prudent policy decision-makers in higher education should arrive at conclusions by acquiring as much information as possible and then rely on informed judgment (a combination of reliable researched data, logical inference, and the right amount of common sense).

In this case, literature exists regarding background check policy and practice; however, there is a very limited amount written about background check policy specifically in higher education. Much of this general literature on background checks are publications that are not peer-reviewed or scholarly in format. Some of these publications are written by leaders in the business of providing background checks, who are promoting their own services rather than providing an overview of the topic. There is also literature that attempts to provide advice on the subject, but it is often fragmented and incomplete, providing only a piece of the subject, unsubstantiated claims, and/or mere warnings of legal pitfalls.

This lack of systematic peer-reviewed studies promotes a propensity for higher education policy makers, human resource (HR) professionals, and (potentially) college admissions officials to make important policy decisions based on fear of another tragedy, limited information, and/or popular belief alone. This calls for change, because “with the increasing need for risk mitigation and the resulting controversy arising from attempts to

²⁰ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools: Theories and Applications* (Boston: Allyn and Bacon, 2004), 85.

institute risk mitigation programs, there is a need for university administrators to better understand the current state of such policies and programs on campuses.”²¹ Considering policy initiatives without the assistance and support of scholarly research can contribute to difficulties for higher education, especially when grappling with a topic that can have serious reputation and financial consequences if not handled with substantial prudence. Or as Alford argues, action can be taken in the absence of research supporting policy decisions, however an initiative is “more likely to have desired consequences if the actors have knowledge of historically analogous situations and the potential consequences of action.”²²

Much of the literature I have reviewed poses important questions, but most authors fail to answer them, leaving open the assumption that merely contemplating the issues and questions surrounding higher education background check policy is sufficient. Merely discussing the concerns of the competing arguments is insufficient; what is needed is an examination of the history and experiences behind a specific background check policy at a single higher education institution in order to improve the understanding and practice of same or similar policies.

Purpose of the Study

This study was designed to attend to the concerns expressed by the AAUP with regard to a lack of systematic studies on extensive background check policy in higher education. This study also helps provide knowledge in order to help address the assertion of Hughes, White, and Hertz’s that universities have adopted a “patchwork” of background

²¹ Stephanie Hughes and Rebecca White, "Risk Mitigation in Higher Education: An Overview of the Use of Background Checks on Campus," *CUPA-HR Journal* 57, no. 2 (2006): 23-32

²² Robert R. Alford, *The Craft of Inquiry: Theories, Methods, Evidence* (New York: Oxford University Press, 1998), 25. Alford also states “An action agenda must be translated into both theoretical and empirical questions if research is to be potentially relevant to social action or social policy,” p.25.

check policies that “lack consistency in application.”²³ For example, in a survey study conducted by Hughes, White, and Hertz, 132 out of 247 higher education human resource personnel responded to various questions about their campus background check practices. The survey data revealed that “institutions reporting a centralized process for hiring were far less likely to have a written policy” for actions taken in response to negative findings in background checks. Further, “research on the processes in organizations that lead to written policy may shed light on this finding.”²⁴ In response to this assertion I examined Georgia Tech’s adoption and early influences of formal background check policy. Through my qualitative research, as defined by Stake, my efforts and perhaps other “vicarious experiences” can serve as “an important basis for refining action options and expectations” for same or similar policy.²⁵

The main purpose of this study was to examine the history and experiences of Georgia Tech’s adoption of background check policy with particular emphasis on what was learned and improved as the policy evolved and changed. This was achieved through interviewing relevant constituents and analyzing of all available/related official policy documents associated with Georgia Tech’s Pre-employment Background Check Policy and Program. This study offers a documented experience for higher education policy makers and HR professionals at other universities to use as an analogous situation in order to

²³ Stephanie Hughes, Rebecca J. White, and Giles Hertz, "A New Technique for Mitigating Risk," 309-318.

²⁴ Stephanie Hughes, Rebecca J. White, and Giles Hertz, "Criminal Background Checks in U.S. Higher Education: A Review of Policy Developments," 20.

²⁵ Robert E. Stake, "Qualitative Case Studies." ed. Norman K. Denzin and Yvonna S. Lincoln, *The Sage Handbook of Qualitative Research* (Thousand Oaks: Sage Publications, 2005), 445 & 460. Stake’s work on qualitative case studies, namely his interpretation of intrinsic, instrumental & multiple case study approach, serve as a basis for understanding the purpose(s) of this study. My emphasis here refers to this study’s possible benefits as an instrumental case study.

formulate more informed decisions (not based on emotional reactions to recent campus tragedies) regarding the use or non-use of same or similar policy.

Research Question

This study broadly addresses the following: What were the most important events and policy 8.1 modifications, over approximately the past ten years, that influenced and challenged the Georgia Tech administration to consider, adopt, and revise a formal background check policy?

CHAPTER 2

REVIEW OF THE LITERATURE

Overview

The purpose of this policy analysis was to examine the experiences, challenges, and history behind adoption of background check policy at Georgia Tech. Specifically, I sought to understand the policy's initial influences and what was learned and improved as the policy evolved and changed. Through this understanding, my study offers valuable insights for other higher education policy makers and HR professionals in making more informed decisions regarding same or similar policy.

This chapter begins with a detailed description of my initial literature search strategy which included: (1) Identification of preliminary sources; (2) Identification of primary research journals; and (3) Use of professional networks. Next is a brief statement highlighting the reasons why there were limited peer-reviewed publications relating to my study (mostly due to the fact this specific field of inquiry is relatively young and unexplored). The chapter continues with an explanation of how I framed basic questions directly related to my study to help guide my literature search. Through answering these basic questions, I was able to critically discuss the literature focusing on the most prevalent and important themes that emerged during and after my reading. Concluding this chapter is a literature review summary in order to identify the most important key points mentioned in the review. It is important to note that as I conducted my review I approached the procedure as a continual process from beginning to end, keeping in mind that the review needed to be flexible and recursive as my study unfolded.

Literature Search Strategy

Following the advice of Mertens in that it “is always a good idea to carefully document your search strategy,” she identifies three sub-steps within her literature reviewing technique. These include identifying preliminary sources, identifying primary research journals, and accessing personal networks (which I discuss in more detail in chapter 4).²⁶ Within these sub-groups I utilized the following processes for each.

Identification of Preliminary Sources

The foci in my initial search were to gain a general exposure to the literature and to identify patterns within related publications. I searched for the most common journals that circulated information pertaining to background check policy in higher education, and I looked for authors who were cited frequently in similar publications. Using Georgia State University’s online library “browse by subject” search option, the subjects “business,” “education,” “general research guide,” and “public administration” provided an ample list of databases for identification of my preliminary sources.²⁷

²⁶ Donna M. Mertens, "Literature Review and Research Problems," Book Chapter in *Research and Evaluation in Education and Psychology: Integrating Diversity with Quantitative, Qualitative, and Mixed Methods* (Thousand Oaks, Calif.: Sage Publications, 2005): 87-113. "Preliminary sources include databases, abstracts, and indexes that contain a compilation of bibliographic information, abstracts, and sometimes full-text articles for a wide range of topics." p. 93 Mertens identifies primary research journals as those that I am already aware of that would logically publish reliable information pertinent to my topic or research questions. Primary research journals are also uncovered through the process of identifying preliminary sources. This is accomplished by "examining the reference lists found at the end of relevant journal articles or books." p. 95. Mertens recommends communicating with people who are doing work in areas related to my interest/study. Mertens lists examples, including people at my own institution and people I meet through professional associations or organized conferences. "Talking to people who have completed related work can reveal sources that you were unaware of, such as unpublished research reports, and provide you with leads from work that is in progress." p. 95

²⁷ Business (sub-headings "Company Profiles," "Business News/Industry Trade Publications" and "Scholarly/Peer-Reviewed Journals") listed Business and Company Resource Center (at GALE), Business Source Premier: Enhanced Business Searching Interface (at EBSCOhost), ABI/INFORM Complete (at ProQuest), and JSTOR; Education listed Academic Search Premier (at EBSCOhost), ERIC (at EBSCOhost), and JSTOR; General Research Guide listed Academic Search Premier (at EBSCOhost) and Research Library (at ProQuest); Public Administration (sub-headings "Articles," "Policy Briefs," and "Public Policy") listed

Online Resources Search Method

Using four major databases (EBSCOhost, ProQuest, GALE, and JSTOR), I identified literature on background check policy in higher education using the following key word search terms/phrases: “higher education human resource policy,” “higher education pre-employment,” and “background checks.” Without limiting the search to peer-reviewed works, the number of publications listed was somewhat unmanageable (sometimes producing thousands of publications, especially with the search term/phrase “background checks”). Many of these non-peer-reviewed works are articles in popular HR magazines, legal reviews, newspapers, and advertisements, and very few are specifically written about pre-employment background check policy in higher education. Some of these general publications are by leaders in the business of providing background checks, who are obviously promoting their own services (not appropriate for this study). For example, in a *Risk Management* article, Stefan Keller proposes a “real-world cost/benefit analysis” in which he compares the benefit of background checks to oil changes in a car.²⁸ This analogy may have surface value for anyone looking for laymen terms to explain the benefits behind background checks. However, Keller contributes nothing toward understanding any of the larger issues (privacy, security, etc.) surrounding use or non-use of background checks. Ron Lashier, vice president for employment screening provider HireRight, takes a different

ABI/INFORM Complete (at ProQuest), PAIS International, Academic Search Premier (at EBSCOhost), Business Source Premier: Enhanced Business Searching Interface (at EBSCOhost), PolicyFile, and ERIC (at EBSCOhost).

²⁸ Stefan Keller, "Employee Screening: A Real-World Cost/Benefit Analysis," *Risk Management* 51, no. 11 (2004): 28-32 Keller (president of the Pennsylvania based company Truescreen, “a provider of targeted background investigation, drug testing, and DOT compliance services” p.32) presents four scenarios of negligent hiring cases and references a 2001 report from “Public Personnel Management” claiming that employers have lost 79% of negligent hiring cases and “settlements average \$1.6million.” I located *Public Personnel Management* at http://www.findarticles.com/p/articles/mi_qa3779 and found two articles in 2001 pertaining to background checks and negligent hiring. Both articles were listed as “deleted” however, I was offered a free trip to Hawaii, three spyware downloads, and an invitation to an online dating site among the thirteen web pop-ups and side bar advertisements.

approach claiming that “up to 80 percent of organizations now perform some kind of criminal background check.” Lashier also claims that “organizations still tend to make many mistakes in their screening procedures and practices” and lists six of these mistakes.²⁹

Within the general non-peer-reviewed publications, there is also some literature that attempts to provide sound advice, but it is often fragmented, merely providing a piece of the subject, unsubstantiated claims, and/or mere warnings of legal pitfalls. For example, Jennifer Schramm’s article in *HRMagazine* discusses improvements in technology and their effects on lowering the costs to conduct background checks; Darlene Clabault’s article gives advice about walking “the fine line between violating privacy” and investigating an applicant’s employment history; and an article in *Fair Employment Practices Guidelines* stresses the need for a solid defense against negligent hiring suits.³⁰ I found that some of these non-peer-reviewed publications pose important questions, but most fail to answer them, leaving open the assumption that merely contemplating the issues and questions surrounding background checks is sufficient. I assert that discussing the concerns of the competing arguments is insufficient, but the pursuit of examining actual challenges encountered with same or similar policy initiatives is more appropriate.

²⁹ Ron Lashier, “6 Big Mistakes & How to Avoid Them,” *Security* 42, no. 7 (2005): 26N Lashier provides no reference or supporting documentation regarding his 80% calculation/claim. Lashier’s six mistakes each recommend a type of pre-employment check that should be done and the final mistake stresses against manual internal processes. The final sentence reads “for more information, visit www.hireright.com” I found it very difficult to trust Lashier’s claims and assertions, especially since his motivations are so obviously fueled by his intentions to promote the services of his company. p. 26N-26P

³⁰ See Jennifer Schramm, “Background Checking,” *HRMagazine* 50, no. 1 (2005): 128-128; Darlene, M. Clabault “Background Checks: What You Need to Know,” *Compliance Magazine* 12, no. 4 (2005): 18; Anonymous. “Background Checks Provide Prevention and Defense.” *Fair Employment Practices Guidelines*, no. 555 (2002): 1

Identification of Primary Research Journals

During identification of preliminary sources I was able to locate some subject-related peer-reviewed works with reference lists. Also, using the databases' "suggested key word" searches and "locate similar works" options, I was able to locate additional works which were not identified using my initial three search terms/phrases. The following journals were identified as primary sources of literature: *Journal of Higher Education Policy and Management*; *The Journal of Higher Education*; *Employment Relations Today*; and *Employee Relations Law Journal*. The following authors were identified as important within the field, having published more than one work and/or producing a work that was essential to this study: Leslie Maxwell, Edward Seidler, and Stephanie Hughes.

Limited Resources

It is important to note that while my review of the literature has been extensive, the available publications specifically relating to my topic are limited. It is my impression that this field of inquiry is relatively young and there are very few peer-reviewed publications. Therefore, I have relied on news reports surrounding the debates and events connected to background checks in higher education, especially those reported in the Chronicle of Higher Education. These reports, while still contributing significantly to my study, need to be considered with care in their assertions as each has not undergone the careful scrutiny associated with a publication from peer-reviewed academic journal.

Questions Guiding Literature Review

As Wallace and Wray recommend, I framed questions directly related to this dissertation to help guide my literature search.³¹ Also, Mertens warns that “in qualitative research, typically the researcher will refine, modify, add, and even discard questions throughout the study.” I followed Mertens’ advice and began “with broader questions that could be modified in response to discoveries made” in the literature search.³² Some of the questions I used include: (1) Are background checks in higher education a policy management fad that will reach a peak and then die out or is the policy practice here to stay? (2) Privacy and security; why are both important to the study of background check policy? (3) What have been significant societal changes and/or events fueling controversies about background check policy in higher education? (4) What are the most important, significant, and reliable studies that have contributed to the study of background check policy in higher education? Through answering these basic questions, I was able to narrow my literature review to focus on the most prevalent and important themes that emerged during and after my reading. According to Rubin and Rubin, utilizing published literature to propose concepts and themes “is perfectly legitimate” and “doing so will help you later on if you are trying to relate your findings to what others have already written.”³³ The following are discussions about these major themes.

³¹ Mike Wallace and Alison Wray, *Critical Reading and Writing for Postgraduates* Sage Study Skills (London: Sage publications, 2006), 130.

³² Donna M. Mertens, "Literature Review and Research Problems," 109. The use of broad questions was used to address the literature, refining the questions in a constructive manner to meet the needs of the study as it progressed.

³³ Herbert J. Rubin and Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data* (Thousand Oaks, Calif.: Sage Publications, 2005), 209.

Background Check Policy in Higher Education: Management Fad or Bona Fide Risk Management Practice.

Anyone who has worked in the higher education environment, especially for state schools, has a general idea of the operational differences it has in comparison with the corporate sector. According to Chaffee, management trends in higher education have a predictable pattern. Usually at the introductory phase the system will be highly praised in the higher education literature and institutions will enthusiastically inquire how best to implement it. Next, the “publication of a number of case studies will appear, coupled with testimonials to the system’s effectiveness.” Finally, both the term(s) used for the new trend and the system itself “will gradually disappear from view.”³⁴ Whether background check policy in higher education will follow this pattern is yet to be determined, but without well-documented case studies to support or critique the practice, it will be difficult to forecast any long-term value.

Robert Birnbaum also offers some interesting assertions in the area of studying management trends in higher education. Birnbaum reminds us that as early as 1960, higher education was not yet a legitimate field of scholarly inquiry. Before 1960, “only a few people studied or wrote about higher education, and relatively few journals existed to publish work in the field.” Fortunately, there is now much more interest in the nature and behavior of higher education. Birnbaum, for example, highlights a peculiar criticism:

When critics of higher education ask, “Why can’t a college be more like a business?” they take a narrow perspective. They refer to business’ presumed efficiency, but they

³⁴ Ellen E Chaffee, Lawrence A. Sherr, *Quality: Transforming Postsecondary Education* (Washington, D.C.: The George Washington University School of Education and Human Development, 1992), 133. Cited in Robert Birnbaum, *Management Fads in Higher Education: Where They Come from, What They Do, Why They Fail* (San Francisco: Jossey-Bass, 2000), 10.

usually ignore business' penchant for short-term expediency and golden parachutes. They overlook the selection of board members by management, provision of stock options for failed executives, and CEO salaries unrelated to company performance and over four hundred times higher than that of the average factory worker.

Curiously, the question, "Why can't a firm be more like a college?" is seldom asked.³⁵

Birnbaum claims that business and higher education are, in fact, similar in that both have a propensity to adopt new management techniques that often turn out to be fads.

Birnbaum does not align his use of the term "fad" with the negative connotation with which it is often associated. On the contrary, Birnbaum uses the term "descriptively rather than pejoratively to refer to something enjoying brief popularity." Birnbaum believes that while fads may fail, "they make important contributions to higher education." Birnbaum defines and warns of the dangers of management fads in that they are a "paradox of complexity and simplicity." Their central ideas may appear "brilliantly original" and "at the same time they are so commonsensical" almost to a degree that they "defy disagreement."³⁶ In the general media the "Case is put so simply, forcefully, and fashionably that any other view sounds untenable, or even politically incorrect. The clarity of the message can lull the listener into uncritical acceptance. Since everybody is saying these sorts of things, surely they must be right."³⁷ Birnbaum's discussion of management fads highlights that acceptance of background check policy in higher education may indeed be appropriate; however, "uncritical acceptance" is not. Fads can be helpful "when they provide managers with new insights that can be incorporated into their professional practice." But they can also be

³⁵ Robert Birnbaum, *Management Fads in Higher Education: Where They Come from, What They Do, Why They Fail* (San Francisco: Jossey-Bass, 2000), 30 & xiii.

³⁶ Ibid., 5.

³⁷ F.G Hilmer and L. Donaldson, *Management Redeemed: Debunking the Fads That Undermine Corporate Performance*, New York: Free Press, 1996, cited in Birnbaum, *Management Fads in Higher Education*, 5.

troublesome when they are “applied as formulas and implemented without the support of organizational participants.”³⁸

Words of Caution on “Best Practices” in Policy Evaluation

Bardach cautions that when approaching the exercise of policy analysis researchers must remain conscious of the elusiveness surrounding “the idea of a problem.” This idea of a problem usually assumes that “people think there is something wrong with the world.”³⁹ It is important to keep in mind that “wrong is a very debatable term.”

This relates to my above discussion on management fads and specifically in that background check policy is supported a great deal under the assumption that as a risk management tool it protects against the “problem” of unsafe campus environments and negligent hiring lawsuits. Because of these perceived “problems,” background check policy can and may be accepted under the blanket term of “best practice.” I agree with Bardach that “a common criticism of the best practices research tradition is that it becomes excessively enthusiastic about what appear to be good ideas before their worth is sufficiently tested.”⁴⁰ This aligns closely with the AAUP’s concern that “interest in background checks has arisen despite the absence of any systematic study of the need for the information such checks might produce.”⁴¹ I find good advice in Bardach’s warning that “people’s private troubles cannot typically be ameliorated by even the most well-intentioned interventions.” Even in circumstances where a reasonable amount of amelioration is possible and applicable

³⁸ Birnbaum, *Management Fads in Higher Education*, xiv.

³⁹ Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving* (New York: Chatham House Publishers, Seven Bridges Press, 2000), 2.

⁴⁰ *Ibid.*, 109.

⁴¹ Matthew W Finkin, Robert C. Post, and Judith J. Thomson, “Verification and Trust,” 113-114.

“there are usually side effects.”⁴² Sometimes the price of these side effects may be worthwhile, however “such calculations must be done carefully and scrupulously.”⁴³

Increased Use of Background Check Policy in Higher Education

In October 2006 *The Chronicle of Higher Education* reported that “colleges and universities are requiring background checks of new staff members far more often than of faculty members, but there are signs that trend may be changing.”⁴⁴ Results of an online survey report conducted by Hughes and White provide an overview of “why and how risk mitigation policies, in particular background checks, are being utilized in higher education.”⁴⁵

Hughes and White argue that their survey is important because:

With the increased need for risk mitigation and the resulting controversy arising from attempts to institute risk mitigation programs, there is a need for university administrators to better understand the current state of such policies and programs on campuses. The research . . . is intended to examine the extent of the utilization of background check policies among Division I and II higher education institutions

⁴² This is most likely what the AAUP had in mind when they warned that background checks can be “highly invasive of an applicant’s privacy and potentially very damaging.”

⁴³ Eugene Bardach, *A Practical Guide for Policy Analysis*, 3. This closely relates to my discussion regarding the dangers of “uncritical acceptance.” For an example of a focused policy analysis see Bardach’s text excerpted from the policy brief “Mandatory Minimum Drug Sentences: Throwing Away the Key of the Taxpayer’s Money?” prepared by the RAND Corporation, 111-125. The key feature and relevance of this excerpt is that long-term jail sentences for serious drug-related crimes have an intuitive and emotional appeal. “They respond to deeply held beliefs about punishment for evil actions,” and in many cases these sentences “ensure that, by removing a criminal from the streets, further crimes that would have been committed will not be.” The Rand Corporation demonstrates that in light of this intuitive appeal (and probably “uncritical acceptance”) if the demand for cocaine remains a jailed supplier is often replaced quickly often without disrupting the illegal drug market. Reconsideration of mandatory long-term sentences for drug trafficking is relevant especially in light of the high cost associated with incarceration in comparison to the limited cocaine control resources. As Rand demonstrates, “if reducing consumption or violence is the goal, more can be achieved by spending additional money arresting, prosecuting, and sentencing dealers to standard prison terms than by spending it sentencing (fewer) dealers to longer, mandatory terms.” 125.

⁴⁴ Martin Van Der Werf, “Colleges Should Perform Background Checks on All New Hires, Conference Panelist Says.” *Chronicle of Higher Education*, 53, no. 8 (2006): A39

⁴⁵ Hughes and White, “Risk Mitigation in Higher Education,” 23.

in the United States, and to identify limitations encountered when trying to implement such policies.⁴⁶

Hughes and White's online survey included fifteen questions, two of which were open-ended "intended to provide additional contextual information regarding their current risk management activities." Of the 376 questionnaires sent to 321 Division I administrators and 55 Division II administrators, a total of 109 responded (28.98% response rate). As of the date of the study, 82% conducted background checks on their employees. About 60% of the Division I schools reported the use of an outsourced company to conduct the service, while 26% of the Division II schools outsourced. "School size did not seem to affect the decision to outsource background checks since the percentages were consistent across all school sizes."⁴⁷ However, the tenure of the respondent "did seem to have a relationship with outsourcing. The longer the tenure of the respondent, the less likely their institution engaged in outsourcing." In general, "survey respondents who reported using background checks indicated that their use has been valuable to their institutions."⁴⁸

Poston advocates that a university's search for a new president is "one of the most significant instances of shared governance in the life of a college or university, but it is also one of the most challenging." The long process involves the recruitment of (sometimes many) outside consultants and advisors. Campus committees assigned to the task are comprised of approximately nine to twenty members, both from the faculty and the

⁴⁶ Ibid., 26.

⁴⁷ Ibid., 27.

⁴⁸ A full report of survey results for Hughes and White's publication is available in the Fall/Winter 2006 CUP-HR Journal. The Oct. 13th, 2006 issue of *The Chronicle of Higher Education* also provides a summary of their findings.

governing board. The process involves several stages, one of which is background and reference checking. Poston advises:

The search committee may charge a subcommittee with checking the references of the fifteen to twenty-five candidates selected after the initial screening of credentials. These are generally the references provided by the candidate. In this phase of the search process, the committee usually refrains from contacting other possible sources of information out of respect for the candidate's privacy. In the case of the eight to ten candidates who become semi-finalists, additional sources of information beyond those listed by the candidate may be contacted. A search consultant may be useful at this point in the referencing process, particularly for conducting criminal and media background checks. In the final phase of screening, anyone who might be able to provide useful information on the candidate's leadership qualifications should be contacted. Referencing by faculty members of the search committee who can contact their counterparts at the candidate's campus is particularly crucial at this stage. Background information at this point can be obtained not only from telephone calls but also from visits to the candidate's campus.⁴⁹

Poston's advice appears to follow a straightforward pattern that includes becoming more and more detailed with every phase of the recruitment process. Each time the candidate pool is narrowed the background checking becomes more acute. This is perhaps a good strategy; however, institutions do not usually recruit a new president every week, month, year, or even decade. So, is this strategy appropriate for regular staff and faculty members?

Springer reports that when the University of Texas proposed a background check policy, "faculty concerns about privacy and a potential negative effect on recruiting led to a very public debate." University officials scaled back the policy in response to the faculty concerns. The revised policy applied "only to 'security sensitive' positions." It is perhaps

⁴⁹ See Muriel E. Poston "Presidential Search Committee Checklist," *AAUP Official Website, Issues in Higher Education*, p.4, unknown Year/Date retrieved September 22, 2007 at <http://www.aaup.org/AAUP/issues/governance/postart.htm>

faculty concerns like these that influence most higher education institutions to implement background checks “on a limited basis, and rarely apply them to faculty.”⁵⁰ By taking this approach, the policy only targets certain positions rather than all new hires. In its policy, the University of Texas had to articulate a clear definition of the term “security sensitive”⁵¹ in order to draw a clear delineation between positions requiring and not requiring background checks.

Significant events fueling controversies about campus security and background check policy in higher education

Strength of Emotional Impact

Cooper, Fusarelli, and Randall highlight the importance of “triggering events” and how they shape, influence, and change policy initiatives and societal interests.⁵² Triggering events can often cause certain societal anxieties to appear suddenly in the limelight and/or disappear from view due to competing concerns. For example, the 2001 terrorist attack on the New York City World Trade Center was a triggering incident that has significantly influenced our societal interest in national security. Because of this incident, people are

⁵⁰ Ann D. Springer, "Background Checks: When the Past Isn't Past," *Academe* 89, no. 2 (2003) March-April Issue: 110.

⁵¹ See University of Texas online HR Policy Number 7.E.2 at <http://www.utexas.edu/policies/hoppm/07.E.02.html> stating “Security sensitive position shall be restricted to those positions described in Texas Education Code 51.215 (c) and Texas Government Code 411.094 (a) (2), as those sections may be amended from time to time. Positions/areas determined to be security sensitive include those of executive and senior level administrators; those with responsibility for providing patient care or for providing child care in a child-care facility, as that term is defined in Texas Human Resources Code 42.002(3); and those with direct access to, or responsibility for, pharmaceuticals, select agents, or controlled substances. Other security sensitive positions will be designated as provided in Section B. (Other definitions available from Business Procedures Memorandum 29-11-02.)”

⁵² Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 69.

accepting greater intrusions into their privacy if they believe it helps protect their communities.

Thomas Birkland also discusses the importance of these types of events; however he uses the term “focusing events.”⁵³ Birkland reminds us that these focusing events can (and often do) attach an emotional element to policy agendas. A very specific and related example of this was President George W. Bush’s promotion of the Patriot Act. Before September 11th, 2001 the Patriot Act would have been more scrutinized regarding the authority it extends over the privacy of U.S. and foreign citizens. However, with the emotional momentum behind it President Bush needed very little to convince the public or Congress to pass the act into law. This aligns with Birkland’s claim that “one need not necessarily have all the evidence in hand if one’s argument strikes a chord with the public and decision makers.”⁵⁴

Faculty Misrepresentation and Criminal Activity

One of the most common uses of background checks is for pre-employment screening. Pre-employment background checks are most often justified by their potential for finding application misrepresentation and histories of criminal activity. Incidents of faculty application misrepresentation, whether deserving or not, seem to attract a lot of attention. As mentioned in my opening statement, the story of Paul Krueger was a pivotal triggering event, throwing the issue of background checks in higher education into an arena

⁵³ Thomas A. Birkland, *An Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making* (Armonk, N.Y.: M.E. Sharpe, 2005). A focusing event according Birkland refers to “A sudden event that can generate attention to public problems or issues, particularly issues and problems that are actually or potentially harmful.” 101.

⁵⁴ *Ibid.*, 15. Birkland describes further, “Evidence and emotion play important roles in policy making, and sometimes emotion gets the upper hand.” 17. For a more expanded discussion as well as some related statistics on news coverage and congressional testimonies on the topic of terrorism see Birkland’s case study, “The September 11 Attacks as a Focusing Event.” 120.

of controversy. The fact that Krueger had held multiple academic positions in several states (and institutions) before his homicide convictions became known to any of his employers forced academia to reconsider its hiring practices. The events of Paul Krueger influenced Pennsylvania State University's policy leaders to adopt its own pre-employment background check policy (effective February 9th, 2004) specifically devoted to faculty hiring. Pennsylvania State University followed up with an additional policy (July 1st, 2004) for non-academic staff as well as creation of a campus procedures guideline for background and reference check processes.⁵⁵

Fossey and Vincent provide an account of Kimberly Harrington, a student of Delgado Community College in Louisiana who was raped by her culinary arts part-time instructor, John Veller. Veller was found guilty at the trial and sentenced to nine years in prison. In a follow-up case, *Harrington v. Louisiana State Board of Elementary and Secondary Education* (1998) a Louisiana appellate court ruled that Delgado Community College was liable for the incident under the doctrine of negligent hiring.⁵⁶ The importance of the Harrington case is Fossey and Vincent's claim that prior to Harrington, no higher education institution had been found liable of negligent hiring based on the conduct of an academic employee. Four years before the release of the 2004 AAUP statement,⁵⁷ Fossey and Vincent made the prediction that:

⁵⁵ See Penn State online HR Policy 95 at <http://guru.psu.edu/policies/OHR/hr95.html>; See Penn State online HR Policy 96 <http://guru.psu.edu/policies/OHR/hr96.html>; See Penn State References and Background Check Guideline available at <http://www.ohr.psu.edu/EmpRelations/Forms/BackgroundCheckProcess.pdf>

⁵⁶ Richard Fossey and Gregory Vincent, "Should Colleges Conduct Criminal Background Checks before Hiring Instructors? A Louisiana Court Says Yes," *Journal of Personnel Evaluation in Education* v14, n2 (2000): 193.

⁵⁷ Finkin, Post, and Thomson, "Verification and Trust," 113-114.

In the years to come, the haphazard, slightly careless way in which postsecondary institutions often recruit faculty members may evolve until the hiring process in the academic world begins to look increasingly like the more standardized process that commonly prevails in the private industry.⁵⁸

The most recent high profile incident that has intensified the issue of pre-employment background checks in higher education occurred at University of Alabama, Huntsville on February 12, 2010. During a routine faculty meeting, biology professor Amy Bishop shot and killed three faculty members and wounded three others. Her true motivations for the killings are not fully substantiated; however, she was denied tenure in March 2009. While it may be suspicious that these two events are related, according to Bartlett et al., “People at Huntsville, and on other campuses, are reluctant to make a connection between her murderous outburst and the vagaries of tenure.” Every year across the United States “people are turned down for tenure, that's common, killing your colleagues is not.”⁵⁹

News releases have reported that Dr. Bishop allegedly had a history of violence and involvement in police investigations. In an article titled “For Professor, Fury Beneath the Surface,” published in the *New York Times*, 20 February 2010, Shaila Dewan, Stephanie Saul, and Katie Zezima reported that in 1994, Dr. Bishop and her husband were questioned in a bomb plot at Harvard, where Dr. Bishop obtained her Ph.D. Allegedly Dr. Bishop and her husband were suspects in the delivery of a letter bomb to Professor Paul Rosenberg, Dr. Bishop’s supervisor at the time when she worked at the Harvard Children’s hospital of neurology. In a previous 17 February 2010 New York Times article, “New Look at Killing

⁵⁸ Richard Fossey and Gregory Vincent, "Should Colleges Conduct Criminal Background Checks before Hiring Instructors?" 197.

⁵⁹ Thomas Bartlett, Robin Wilson, Paul Basken, David Glenn, and Josh Fischman, "In Alabama a Scientist's Focus Turns Deadly," *Chronicle of Higher Education*, 56, no. 24 (2010): A8.

of Brother of Professor,” Dewan and Zezima reported that in 2002 Dr. Bishop was charged with assault. At a restaurant in Peabody, Massachusetts she had punched a woman in the head. According to a police report, Dr. Bishop quarreled with the woman over the last booster seat in the restaurant. “Dr. Bishop was sentenced to probation and prosecutors recommended she take anger management classes, though it is not clear whether she did.”⁶⁰ Also, when Dr. Bishop was 20 years old she was implicated, but not charged in the shooting death of her brother, Seth Bishop, which was ruled accidental. Her mother told police investigators that Amy had been trying to unload a shotgun when it went off. As of June, 2010 the case of her brother’s shooting has been re-opened. After finding a set of missing police records concerning the death of Seth Bishop the Norfolk County district attorney released a statement saying that “there had been probable cause to charge Dr. Bishop with assault with a dangerous weapon, carrying a dangerous weapon, and unlawful possession of ammunition.”⁶¹

Had Dr. Bishop actually been charged with any these violent crimes, a pre-employment background check with a comprehensive criminal history search may have influenced the University of Alabama hiring decision. Ray Garner, a spokesman for the university in Huntsville, said that the university knew nothing of Dr. Bishop's violent past when she was hired and that there were no indications of trouble in her personnel file. "We did the normal academic background checks," Mr. Garner said, adding that Dr. Bishop had letters of recommendation from Harvard and elsewhere. "She seemed pretty impeccable."⁶²

⁶⁰ Shaila Dewan and Katie Zezima, “New Look at Killing of Brother of Professor,” New York Times, 17 February 2010, A11.

⁶¹ Ibid., A11.

⁶² Ibid., A11.

On September 23rd, 2011 Laura Resten reported that Dr. Bishop had recently pleaded not guilty by reason of mental disease or defect. Dr. Bishop remains in the Madison County jail awaiting her trial scheduled for March 19th, 2012.⁶³ The overall outcome of the University of Alabama shooting is yet to be determined; however, the incident contributes significantly to increasing campus tensions between privacy and security as well as the debate surrounding the need for more comprehensive background checks in higher education. According to Sokolow, the shooting “will lead to calls for criminal background checks and revised hiring practice,” however, “campus shooters rarely have reportable criminal histories that would show up on a typical background screening.” This rationale supports the argument that criminal histories “are not predictive of mass shootings,” and Dr. Bishop’s history, currently, only comprises of alleged and unproven crimes which “makes for media fodder, but may not be effective prevention.”⁶⁴

Violent Campus Crimes Involving Students

The Paul Kruger, John Veller, and Amy Bishop incidents have influenced higher education officials either to adopt or at least to consider adopting stringent background check policies. Because background checks have increased for university staff and faculty members, is it possible, especially due to past and recent incidents of student violence, that background checks may become part of the matriculation process? My readings within the literature indicate that this will be a future topic of debate surrounding background checks in

⁶³ Laura Resten, “Harvard PhD Appears in Court for Allegedly Murdering Colleagues,” *The Harvard Crimson*, 23 September 2011 [journal online] available from <http://www.thecrimson.com/article/2011/9/23/bishop-shot-harvard-broussard/>; Internet; accessed 18 December 2011.

⁶⁴ Brett A. Sokolow, “Huntsville Shooting Should Encourage ‘Cultures of Reporting,’” *Chronicle of Higher Education*, 56, no. 25 (2010) A31.

higher education. The following are discussions of student-related incidents fueling the fear that tends to support increased use of background checks.

In August 1966, University of Texas student Charles Whitman, while on university property, shot and killed 14 people (wounding several others). This event spurred fear and sorrow across campuses in the United States and stands as one of the worst mass killings in United States history. Approximately 40 years later on April 16, 2007 Virginia Tech student, Seung-Hui Cho shot and killed 32 people on campus grounds in Blacksburg, Virginia. Incidents such as these, and the more recent Northern Illinois University shooting on February 14, 2008, trigger extremely emotional responses within campus communities. Some responses are well thought out and executed with the due diligence expected from higher education and public leaders. For example, Virginia Governor Tim Kaine quickly established a panel of investigators to gather information about the events leading up to the Virginia Tech incident. Gordon Davies, as a member of the Governor's panel, reports that they interviewed more than 200 people involved and/or connected with the event, including (among others) the Virginia Tech president, faculty members, students, police, members of Cho's family, government officials, and staff members for the local hospitals who treated the wounded.

The panel produced a report that advocates seven "crucial lessons learned." Among these seven, two are particularly relevant to this dissertation. First, the panel recommended, "States should comply with the federal Gun Control Act" in that "all states should require background checks for all firearms sales, whether from registered gun dealers or in personal transactions."⁶⁵ Cho, having been previously identified as a potential threat to himself or

⁶⁵ Gordon K. Davies, "Connecting the Dots: Lessons from the Virginia Tech Shootings," *Change: The Magazine of Higher Learning* 40, no. 1 (2008): 8-15.

others, may have been prevented (under federal law) from purchasing the firearms he used. Second, what is needed is a better way to access student's mental health records. More specifically,

Records of immunization travel with us from early childhood through institution after institution. But a college or university does not get records about communicable diseases, not to mention serious mental health problems, psychotropic medications (which a student may stop taking), or special education programs that may have helped a student in high school. This information clearly should not be used in admissions. But, later perhaps while choosing courses, students might be asked to sign waivers allowing the institution access to their health records. At the least, university staff should be expected to ask the parents of a student whose behavior causes concern for access to her or his health records.⁶⁶

Also in response to the Virginia Tech shooting, the Governor of Massachusetts, Deval Patrick, commissioned four authorities in their respective related fields to research the current and future state of United States campus safety.⁶⁷ Their report, submitted to the Massachusetts Department of Higher Education, claims, "Colleges must respond proactively to the risk, as parents rightly expect a special level of care for their sons and daughters."⁶⁸ The final report promoted 27 safety improvement recommendations within 6 categories (early detection and prevention, physical and electronic security, campus police, mass notification, policies and procedures, and emergency response). Recommendation number

⁶⁶ Ibid., 15.

⁶⁷ These four authorities included: Daniel O'Neill, President and CEO, Applied Risk Management; James Alan Fox, Ph.D., The Lipman Family Professor of Criminal Justice and Professor of Law, Policy and Society, Northeastern University; Roger Depue, Ph.D., Forensic Behavioral Scientist – Founder, The Academy Group, Inc.; Elizabeth Englander, Ph.D., Professor of Psychology and Director of Massachusetts Aggression Reduction Center, Bridgewater State College.

⁶⁸ Daniel O'Neill, James F Fox, Roger Depue, and Elizabeth Englander, *Campus Violence Prevention and Response: Best Practices for Massachusetts Higher Education*. 2008. See full report available at: <http://www.mass.edu/library/Reports/CampusViolencePreventionAndResponse.pdf> Internet; accessed 18 September 2010.

19 (within the policies and procedures category) advocates that “graduate student applicants should be directly queried regarding any unusual academic histories, as well as criminal records and disciplinary actions.”⁶⁹

While the recommendations listed in these reports appear reasonable and noteworthy, Fox reminds us that some reactions to tragedy are not prudent and “over preparing students unreasonably risks intensifying their fears and anxiety.” For example, in the wake of the shootings at Virginia Tech and Northern Illinois “two dads in Massachusetts formed a security company to produce and sell special backpacks lined with bullet deflecting shields,” probably not considering the fact that it might not be a good idea to carry extra weight when attempting to flee from a dangerous scene.⁷⁰ Also, a number of state legislators have been “considering bills that would allow people to carry concealed weapons on college campuses.” Villahermosa reports that while “some of these legislative bills have been defeated, they may be reintroduced, or other states may introduce similar measures.”⁷¹ Thus, colleges should carefully consider the consequences involved with having armed faculty, staff, and students on their campuses.

From a strict financial perspective these and similar safety-related policy changes would invariably divert funds away from the primary missions of a university (research, teaching, and service). Perhaps those legislatures advocating more weapons on campus need to be reminded that “notwithstanding recent episodes, for the 18 million college students in America, the odds of being murdered on campus are so low one might need a course in college math to calibrate them.” And as with any tragedy, “our society often embraces and

⁶⁹ Ibid., v.

⁷⁰ James Alan Fox, “Campus Shootings: A Prevention Primer,” A64.

⁷¹ Jesus M., Villahermosa Jr., “Guns Don’t Belong in the Hands of Administrators, Professors, or Students.” *Chronicle of Higher Education* 54, no. 32 (2008): A56.

even demands extreme responses to extreme and aberrational behavior, and such actions, in hindsight, aren't always prudent.”⁷²

Finally, Eric Hoover reports that Gwendolyn J. Dungy, executive director of the National Association of Student Personnel Administrators, predicted that “Shots Fired,” a training video that recreates a campus shooting will be in high demand. This is because “people are grasping at anything that could be a resource; nobody wants to look as if they didn't prepare.”⁷³

Importance of Privacy Law and Security to Background Check Policy

The Patriot Act

Debates surrounding the Patriot Act provide a viable platform for discussing background check policy. One could argue that the Patriot Act is somewhat of a parent policy, at the federal level, to background check policy in higher education. Like the events of September 11th, 2001 it served as a triggering (or focusing) event invoking high impacting influence over our nation's increased need for security.

Birkland discusses security and liberty as conflicting policy goals in his case study “The Patriot Act: Security verses Liberty after September 11.” Signed into law October 26th, 2001, the Patriot Act empowered government agencies, most notably the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI), with additional authority. Under the law, “the CIA is empowered to direct FBI domestic surveillance

⁷² James Alan Fox, "Fueling a Contagion of Campus Bloodshed," A36.

⁷³ Eric Hoover, "Colleges Wade into Survival Training for Campus Shootings," *Chronicle of Higher Education* 54, no. 42 (2008): A1.

operations for the first time.” Also, the CIA is now permitted to “acquire evidence obtained by criminal wire taps and federal grand juries.”⁷⁴

Birkland describes how critics of the Patriot Act espouse that the act “erodes the liberties guaranteed under the Constitution” and it “places security higher than liberty.” The controversies over the Patriot Act are not surrounding the question of whether or not the U.S. should defend against terrorism. The concerns are more about “whether the act goes so far in the name of security-whether it really promotes it or not-that the very liberties on which the nation was founded are undermined.”⁷⁵ It is not my purpose or intention to contest or support these debates. However, it is important to note the seemingly temporary emotional fervor that supported the relinquishment of some of our civil liberties. This shift in increased governmental power by the president was perhaps achieved through what Agamben would refer to as a “State of Exception.”⁷⁶

As noted in my opening statement, Vinik identifies major factors contributing to the growing support for extensive pre-employment background checking in higher education.⁷⁷ One of these is improved use of technology and availability of electronic data-collection making it quicker and easier to obtain personal (and often very private and sensitive) information. This increased use and availability of electronic data has also increased the sensitivity and debates surrounding privacy and sensitive data in general (not just pre-

⁷⁴ Thomas A. Birkland, *An Introduction to the Policy Process: Theories, Concepts, and Models*, 164.

⁷⁵ *Ibid.*, 165.

⁷⁶ Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005). Agamben provides an expanded discussion of this concept, however for my purposes here I simply refer to points in history (or circumstances under which) additional power is acquired by leaders during times when national security is at risk (a common rationale used to support increases in power by those in power).

⁷⁷ Frank D. Vinik, "Why Background Checks Matter in Academe," B13.

employment application information). Cate identifies the complexity of privacy issues and explains that

yet for all the passion that surrounds discussion about privacy, and the recent attention devoted to electronic privacy, surprisingly little consensus exists regarding what “privacy” means, especially with regard to the variety of contexts in which privacy issues are raised; what values are served, or compromised, by extending further legal protection to privacy; what values are affected by existing and proposed measures designed to protect privacy; and what principles should undergird a sensitive balancing of those values, particularly in light of privacy’s many definitions, contexts, and sources of legal protection.⁷⁸

In other words “privacy is not an absolute;” it is very subjective and contextual. It is “neither inherently beneficial nor harmful.” Rather, the term connotes “a complex aggregation of positive and negative attributes.” And to complicate the subject even further, “privacy interests at stake in any given situation may vary from the profound to the trivial, and that valuation will depend significantly on who is making it.”⁷⁹

Cate also identifies major privacy issues which are the subject of ongoing and extensive debate among government officials, business leaders, and academics. These issues can be “divided generally” into five categories: intellectual property; application of the first amendment; economic issues; multinational impact and regulation; and privacy, security, and encryption. The importance of these issues and “the urgency of resolving them are exacerbated by the fact that more data than ever before are being made available and in a digital format.” According to Cate, there are four reasons for this surge of electronic data. First, more than ever before digital information is “easier to generate, manipulate, transmit,

⁷⁸ Fred H. Cate, *Privacy in the Information Age* (Washington, D.C.: Brookings Inst. Press, 1997), 3.

⁷⁹ *Ibid.*, 31.

and store.” Second, there is the considerable lowering of the costs associated with these activities. The third reason is “in an increasingly information-based society electronic information is valuable in its own right,” especially in comparison to the same information in a non-digital format. For example, businesses are recognizing the value of digital data which can be used multiple times compared to paper format information which often can only be used once (such as a set of printed labels used for mail marketing). Finally, digital data has outpaced non-digital data in its ease of protection in that the software and tools used to store it have increasingly become more sophisticated (utilizing complex back-up safeguards and storage programs).

Security Policy and Stone’s Dimensions of Need

Stone defines security “like other policy goals” as “an exercise in political claims-making.” In her discussion of security and “dimensions of need” Stone raises important considerations regarding our country’s increased eagerness to trade privacy for security. Stone carefully describes how her dimensions of need explain the dynamics of a policy conflict centered on the goal of security. Her analysis provides a framework to show “how political actors can make plausible yet competing claims about security.” It also demonstrates how “any minimal and allegedly objective definition of need, such as sheer survival of an individual, a firm, a group, an organization, or a nation, can be expanded using five dimensions.”⁸⁰ These dimensions are material versus symbolic, absolute versus relative, direct versus instrumental, physical versus communal, and present versus future. It is important to note that these dimensions are “not meant to be a hierarchy or sequential

⁸⁰ Deborah A. Stone, *Policy Paradox: The Art of Political Decision Making* (New York: Norton, 2002), 98.

order,” rather the dimensions are “alternative ways of conceptualizing needs” and these conceptions can “lead to competing political claims about security.”⁸¹

Material v. Symbolic. People cling to the idea that security can be broken down into objective and calculable needs, whether they be meals or land mines. One of the first and most important challenges to the idea of describable needs is that the symbolic meanings behind material often are more important than the material itself. In other words, the ideas people have about their needs can take precedence over the actual need itself. Stone uses the somewhat simple example of food to describe the complexities between material and symbolic need. For example, “eating the same food as others is a basic mark of belonging,” and on the flip side of the coin “refusal to share food is a sign of difference, distrust, and being a stranger.”⁸² Food can induce a connectedness “to a nation through historical tradition,” and it can also provide a sense of belonging to specific regions or places. “Pouring molasses on waffles makes you a Southerner, while using maple syrup identifies you as a New Englander.”⁸³ Serving and eating turkey on Thanksgiving Day is a ritual that is shared and cherished in the United States so much that not following this pattern is often considered un-American.

Policy makers can sometimes utilize these meanings behind material objects to appeal to the emotions of those who share the same or similar beliefs. Of course food alone is not exactly an example that fully explains this dimension of need, but one may consider other items which may often come in and out of the controversial spotlight. For example,

⁸¹ Ibid., 97.

⁸² Ibid., 88.

⁸³ Ibid., 89.

“guns in the context of physical security and gun control.” Or perhaps “water in the context of pollution debates, hazardous waste disposal, and water rights disputes.”⁸⁴

Absolute vs. Relative. Stone uses the poverty line as an example of how “need” can be defined by society as absolute. The poverty line interprets need in terms of a fixed dollar amount, and because of its symbolic dimension as described above, need is relative as well as absolute. “Absolute concepts peg the definition of need to a fixed, usually numerical, point.” In contrast to absolute, “relative concepts peg the definition of need to one’s place in a distribution.”⁸⁵ In other words, relative needs are defined as we compare them to what or how others experience, possess, enjoy, or suffer.

Direct vs. Instrumental. Direct needs are easily defined as needs that are required or desired because they have a direct easily observable impact. A healthy supply of food leads to good nutrition. An active fireplace in a log cabin provides warmth during a cold winter night. In contrast, an instrumental need is something that does not provide an immediate direct satisfaction, but it serves as a bridge or pathway to securing other/future desired needs. Education is often justified as an instrumental need. “Students are taught to need it because it will enable them to get good or satisfying jobs, to be more productive workers, or to be more informed citizens.”⁸⁶

Physical vs. Communal. Stone argues that human beings “require community, solidarity, a sense of belonging, dignity, respect, self-esteem, and honor.” These are examples of needs for “relationships, not things” that individuals develop a desire for, and according to Stone “[W]e know very little about how communities can deliberately provide

⁸⁴ Ibid., 90.

⁸⁵ Ibid., 90.

⁸⁶ Ibid., 93.

for them.” In the political arena these are “inchoate feelings that drive conflict and lend force to political demands” and because these feelings are often difficult to define and evaluate, “politics often requires people to translate these needs into more tangible and measurable claims.”⁸⁷

Present vs. Future. Stone’s explanation of present verses future need is the most relevant to this dissertation, because one of the most common and strongest arguments for background check policy is that the practice safeguards against future potential threats (both human and legal). As discussed earlier, Vinik discusses major factors contributing to an increased acceptance of background checks. One of these is a change in the legal atmosphere due to high-dollar judicial verdicts against organizations and institutions for negligent hiring. These verdicts have forced employers to become more conscious of potential liability. Another of Vinik’s factors is a social shift because “in the wake of September 11th, 2001, people are accepting greater intrusions into their privacy if it helps protect their communities.”⁸⁸ Adding to this social shift (specifically for higher education) are high-profile incidents of student violence (Virginia Tech and Northern Illinois shootings), which have forced campus leaders to re-evaluate their campus safety policies and procedures. This combination of social shift with the fear of legal liability has exemplified a perceived campus need “based on a condition of being at risk.”⁸⁹ Stone advocates that

the focus of safety related regulatory activity is always on potential future needs. Potential future needs often have a political potency far greater than actual needs, because fear of the unknown plays a bigger part. The human imagination is capable of creating infinite terrors, and terror explains why there is often an emotional fervor

⁸⁷ Ibid., 96

⁸⁸ Frank D. Vinik, "Why Background Checks Matter in Academe," B13.

⁸⁹ Deborah A. Stone, *Policy Paradox: The Art of Political Decision Making*, 95.

to arguments about this type of need, even when the risks are described in passionless statistics.⁹⁰

Literature Review Summary

Birnbaum reminds us of the importance of recognizing management fads in higher education. His contribution to this literature review highlights the danger of uncritical acceptance of background check policy which can be troublesome if the practice is applied as formula and without the support of organizational participants. Hughes, White, and Hertz appear to be the leading contributors of literature directly related to the topic of background check policy in higher education. Through their survey work they assert that implementation of more comprehensive criminal background check policies in U.S. higher education needs more careful consideration. Without closer attention to the wide array of risks and complexities involved with background check policy, standard procedures could lead to a “fragmented approach.”⁹¹

My searches within the literature support the AAUP’s claim regarding an overall lack of sufficient systematic studies about background check policy in higher education. Literature exists regarding background check policy and practice; however, there is a very limited amount written about background check policy specifically in higher education. Much of this general literature on background checks are publications that are not peer-reviewed or scholarly in format. Some of these publications are written by leaders in the business of providing background check services, who are promoting their own agenda, therefore producing a biased point of view. There is also literature that attempts to provide

⁹⁰ Ibid., 95

⁹¹ Stephanie Hughes, Rebecca J. White, and Giles Hertz, "Criminal Background Checks in U.S. Higher Education: A Review of Policy Developments, p. 20.

advice on the subject, but it is often fragmented and incomplete, providing only a piece of the subject, unsubstantiated claims, and/or warnings of legal pitfalls. Much of the literature poses important questions, but most authors fail to answer them, leaving open the assumption that merely contemplating the issues and questions surrounding higher education background check policy is sufficient.

Due to such a shortfall of peer-reviewed literature on background checks in higher education, I have relied to a large degree on reports that highlight important triggering events that have potentially shaped, influenced, and changed background policy in higher education. Some of the most significant triggering events, in chronological order, include first, the 2001 terrorist attacks on the New York City twin towers which has had an overall national influence on our United States culture to accept greater intrusions of our privacy for increased security measures. Second, the 2003 circumstances of Paul Krueger, a faculty member who had multiple academic positions at several higher education institutions while at the same time having multiple murder convictions in his criminal history unbeknownst to any of his employers (a direct effect of the Paul Krueger incident was Pennsylvania State University's adoption of formal pre-employment background check policies in 2004). Third, the March 2004 AAUP release of its public statement which addressed several significant questions and problems surrounding the perceived need for, and use of, extensive pre-employment background checks in higher education. Fourth, incidents of campus violence including the campus shootings at the University of Texas (1966), Virginia Tech (2007), Northern Illinois (2008), and most recently the University of Alabama (2010). Finally, other triggering events include our society's improved use and availability of electronic-data-collection techniques, making it quicker and easier to obtain personal information on potential employment applicants and a change in the legal atmosphere due to high-dollar

judicial verdicts against organizations and institutions for negligent hiring which has forced employers to become more conscious of potential liability.

CHAPTER 3

POLICY 8.1 & PRIVACY LAW

Cate reminds us that privacy issues are extremely complex, especially given that there is very little consensus regarding the definition of privacy.⁹² The structural dimension of my conceptual framework (which I discuss with more detail in the next chapter), according to Cooper, Fusarelli, and Randall, emphasizes that “analysis of the role and effects of federal, state, and local institutional structure is critical” for understanding policy.⁹³ Thus my research led me toward understanding how Policy 8.1 relates with (and was influenced by) major laws and regulations related to privacy and security. For example, my readings on privacy issues, as well as analysis of federal online documents, highlighted that Policy 8.1 has a strong connection with the Fair Credit Reporting Act (FCRA), the Federal Educational Rights and Privacy Act (FERPA), and the Health Insurance Portability and Accountability Act (HIPAA).

The Federal Trade Commission and Fair Credit Reporting Act

One of the federal government’s early efforts to protect U.S. citizens from wrongful acts is the Federal Trade Commission (FTC). “When the FTC was created in 1914, its purpose was to prevent unfair methods of competition in commerce as part of the battle to ‘bust the trusts.’” Over the years, Congress passed additional laws giving the agency greater authority to police anticompetitive practices. In 1938, Congress passed a broad prohibition against “unfair and deceptive acts or practices.” Since then, the Commission also has been

⁹² Fred H. Cate, *Privacy in the Information Age*.

⁹³ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 43-44.

directed to administer “a wide variety of other consumer protection laws.” The FTC is important to this dissertation because it is the overarching federal program that oversees the Bureau of Consumer Protection. The Bureau of Consumer Protection, which “works to protect consumers against unfair, deceptive, or fraudulent practices in the marketplace,” has seven divisions, each with its own area of expertise, including Advertising Practices, Consumer and Business Education, Enforcement, Financial Practices, Marketing Practices, Planning and Information, and (the division most important for this dissertation) Privacy and Identity Protection.⁹⁴

The Division of Privacy and Identity Protection “oversees issues related to consumer privacy, credit reporting, identity theft, and information security.” The Division also “enforces the statutes and rules within its jurisdiction, engages in outreach and policy development, and educates consumers and businesses about emerging privacy, credit reporting, and information security issues, as well as identity theft prevention and assistance.” The Division of Privacy and Identity Protection enforces the Fair Credit Reporting Act (FCRA) which “ensures the accuracy and privacy of information kept by credit bureaus and other consumer reporting agencies, and gives consumers the right to know what information these entities are distributing about them to creditors, insurance companies, and employers.” For example, under the FCRA, employers using a third-party contractor to conduct background checks are mandated to obtain expressed permission from the individual being checked. The FCRA also requires that the individual being checked has a right to obtain a copy of the background check report. These two federal

⁹⁴ FTC, “About the Federal Trade Commission,” March 2008, available from <http://www.ftc.gov/ftc/about.shtm> Internet; accessed 21 September 2011; FTC, “About the Bureau of Consumer Protection,” October 2007 available from <http://www.ftc.gov/bcp/about.shtm> Internet; accessed 21 September 2011.

regulations are very important to the background check process as they provide a reasonable level of protection for employment candidates.⁹⁵

FERPA & HIPAA

The 1974 Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act of 1996 (HIPAA) are both important to background check policy in that each are federal regulations that protect official records.⁹⁶ In brief, the major goal of HIPAA is “to assure that individuals’ health information is properly protected” while also “allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being.”⁹⁷ FERPA is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. According to Lake, FERPA “is a pillar in the panoply of federal laws protecting basic civil rights,” and it is “essential if other civil-rights laws are to have full meaning and effect.” Before the 1960s and 1970s, many colleges’ record keeping could easily be categorized as “primitive” compared to today. “An evil Dean Wormer could create secret files or selectively disseminate information about students without their knowledge or consent.” A dean could easily make an insinuation that a student was a member of an unconstitutional society to “poison that student's future.” FERPA legislation “changed an

⁹⁵ FTC, “Division of Privacy and Identity Protection,” October 2007 available from <http://www.ftc.gov/bcp/bcppip.shtm> accessed 21 September 2011.

⁹⁶ See most recent (December 2008) governmental document release by the U.S. Department of Education at: <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>; Also See official governmental document release of “Summary of the HIPAA Privacy Rule” at: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf>, accessed 21 September 2011.

⁹⁷ Ibid., 3.

entire culture of records management on campuses” and “drove dark practices to the margin.” FERPA’s passage, with its perceived strict regulatory protection of student records, ensured “a somewhat weird era of federal privacy-law regulation” lasting over 30 years. “Legions of administrators predictably overreacted and invented their own versions of FERPA to avoid war with the government,” and many of these “self-inflicted protocols protected student privacy far too much, not too little.”⁹⁸

FERPA and HIPAA were launched into the media spotlight because of the Virginia Tech campus shootings. Seung-Hui Cho, the student who shot over 30 people on Virginia Tech’s campus in April 2007, was previously identified as a danger to himself and others in 2005 by the Carilion St. Albans Behavioral Health Center. Had these records been shared with other governmental entities, such as the federal system for firearms background checks or the Virginia Tech campus police, Cho may have been prevented from purchasing the firearms he used in the shooting. St. Albans did share the records (which were protected under HIPAA) with the Virginia Tech Cook Counseling Center; however, the counseling center never shared the records (protected under FERPA) with any other campus unit or outside entity. FERPA does allow institutions to communicate with “appropriate officials” in the event of a safety or health-related “emergency;” however, these terms are often left open to interpretation so “colleges and universities have historically erred on the side of not disclosing information to third parties out of concern for student’s privacy and an interest in complying with federal law.”⁹⁹

⁹⁸ Peter Lake, "Student-Privacy Rules Show a Renewed Trust in Colleges," A72.

⁹⁹ Chris Rasmussen and Gina Johnson, *The Ripple Effect of Virginia Tech: Assessing the Nationwide Impact on Campus Safety and Security Policy and Practice*, Midwestern Higher Education Compact, 2008.

As a direct consequence of the Virginia Tech incident, the Department of Education revised the FERPA regulations. Announced in December 2008 and effective as of February 2009, “the new rules try to strike a better balance between privacy and safety.” Colleges are now permitted to release information about a student if “there is an articulable and significant threat to health or safety of the student or other individuals.” Overall, the new regulations provide colleges with more discretion in defining what constitutes an emergency, what records can or may be disclosed, and to whom. As Lake further describes, “now that a period of testing has passed” FERPA regulation is now more “free to evolve into a more facilitative law” and less as “a watchdog to protect other civil rights.” FERPA originally surfaced “in a climate of mistrust and misdeeds” so “colleges should celebrate the new regulations as a moment of redemption.” Of course, with trust and additional freedoms comes added accountability. The weight of responsibility in exercising proper judgment regarding campus safety and appropriate confidential record sharing now falls heavily on campus officials.¹⁰⁰

¹⁰⁰ Peter Lake, "Student-Privacy Rules Show a Renewed Trust in Colleges," A72.

CHAPTER 4

INITIAL RESEARCH APPROACH, METHODOLOGY, & METHOD

Introduction

This chapter describes my study's initial research approach and includes discussions around the following areas: (1) Use of Cooper, Fusarelli, and Randall's conceptual framework to guide my research; (2) Rationale for qualitative research design; and (3) My rationale for interviews and document analysis; (4) Positional and Political Considerations.

One of the distinct advantages of my past employment with The Georgia Tech Office of Human Resources (OHR), from 2001-2006, was my close connection, in general, with the field of human resources. On a continual basis, I was in close contact with several professionals in the HR field, including colleagues in my own office; HR personnel from other higher education institutions, especially those within the Board BOR; and people I met through Georgia Tech's membership in two major HR professional organizations, The Society for Human Resource Management (SHRM) and The College and University Professional Association for Human Resources (CUPA-HR).¹⁰¹

¹⁰¹ SHRM stands as one of the leading and most respected organizations in the field of HR management. See <http://www.shrm.org/about/> "The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 210,000 individual members, the Society's mission is to serve the needs of HR professionals by providing the most essential and comprehensive resources available. As an influential voice, the Society's mission is also to advance the human resource profession to ensure that HR is recognized as an essential partner in developing and executing organizational strategy. Founded in 1948, SHRM currently has more than 550 affiliated chapters and members in more than 100 countries." CUPA-HR is important, because they are not only devoted to HR, but they specialize in the field of HR management within higher education (unlike SHRM which is a professional organization devoted to the field of HR in general). See <http://www.cupahr.org/> "CUPA-HR members are higher ed HR. Our membership is institution-based and includes 85 percent of all U.S. doctoral institutions, 70 percent of all master's institutions, 51 percent of all bachelor's institutions, and 465 community colleges and specialized institutions. We also serve other organizations that are affiliated with higher education. We provide vital resources to more than 9,600 higher education HR professionals at nearly 1,600 institutions — every day."

Conceptual Framework Guiding the Research

The following is an explanation of the conceptual framework that emerged as the most appropriate for my study. Selection of this framework came about after careful consideration of how to address my research question given the results of my literature review. This framework served as a basis and focus shaping my research process, informing the methodological design, and influencing the selection of data-collection instruments.

Bloomberg and Volpe espouse the importance of utilizing a conceptual framework after completion of the initial literature review. A well designed conceptual framework serves as the “scaffolding of the study” consisting of “categories” and “descriptors” (or dimensions as described below). These initial categories/dimensions serve as the “backbone” of a study and help in developing the research process and methodological design, which in turn facilitates choice of data-collection methods.¹⁰² Serving as a “repository” for my data collection, my conceptual framework offered a basis for informing various iterations of my coding scheme. Used as a “working tool” in connection with my research question this framework provided “an organizing structure” for reporting my study’s findings.¹⁰³

Cooper, Fusarelli, and Randall’s Policy Model

Developed by (and borrowed from) Cooper, Fusarelli, and Randall my conceptual framework, designed for understanding organizational policy, consisted of considering four

¹⁰² Linda Dale Bloomberg and Marie Volpe, *Completing Your Qualitative Dissertation: A Roadmap from Beginning to End* (Los Angeles: Sage Publications, 2008), 58-59.

¹⁰³ Ibid., 61.

important dimensions. These included the normative, structural, constitutive, and technical dimensions.

The normative dimension “includes the beliefs, values, and ideologies that drive societies to seek improvement and change.” The normative dimension is important because it considers the goals, needs, and assumptions of policy (the aspects of policy and policy-making that are often not easily explained through the logical and systematic approaches of positivistic methods). Study in this dimension included consideration of the organizational mission and cultural make-up of Georgia Tech.

The structural dimension “includes the governmental arrangements, institutional structure, systems, and processes that promulgate and support policies.” The structural dimension advocates that “analysis of the role and effects of federal, state, and local institutional structure is critical” for understanding policy. Focus on this dimension included exploring/explaining the organizational structure of Georgia Tech as well as how Policy 8.1 was influenced and affected by related federal laws and USG policy.

The constitutive dimension includes “theories of the networks, elites, masses, interest groups, ethnic/gender groups, providers and ‘end users,’ and beneficiaries who influence, participate in, and benefit from the policymaking process.”¹⁰⁴ Focus on this dimension included consideration of some of the organizations and interest groups that share close professional relationships with Georgia Tech. These relationships were important because they can (and often do) have a strong influence on Georgia Tech policy decisions.

Finally, the technical dimension of this framework consists of “planning, practice, implementation, and evaluation” or what Cooper, Fusarelli, and Randall refer to as “the nuts

¹⁰⁴ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 43-44.

and bolts of policymaking.”¹⁰⁵ This dimension formed the main crux of my research and through interviews and document analysis consisted of exploring: (1) The experiences of key constituents associated with Policy 8.1; (2) The evolutionary changes of Policy 8.1 from its original release in June of 2005 through its three major revisions spanning from 2006-2010; and (3) Program statistics and financial data of Georgia Tech’s Office of Human Resources Background Check Program.

Rationale for Qualitative Research Design

My choice of research design was reached through careful consideration of the multiple research options available, the main goals of my study, my conceptual framework, and the implications of my epistemological stance. In order to articulate my research design as well as clarify and situate my epistemological stance some clarification of how I selected my approach (and terminology associated with it) is necessary. Below is a discussion of how I used Michael Crotty’s four basic questions for initiating and developing my research design.¹⁰⁶ These four questions include: (1) What methods will be used?; (2) What methodology will be employed?; (3) What theoretical perspective will support the research proposal?; and (4) What epistemology will inform the research proposal?

¹⁰⁵ Ibid., 44.

¹⁰⁶ I have found that many research authors have complimented and competed with each other over appropriate use of terminology associated with research method and design. My aim here is not to advocate who is correct in these debates; however, I use Crotty’s four questions because they offer a comprehensive approach (or guide as I have use of it here) toward making appropriate decisions regarding overall research design.

Initial Research Design & Crotty's Four Research Questions

First, what methods will be used? Methods as defined by Crotty are “the techniques or procedures used to gather and analyze data related to some research question or hypothesis.”¹⁰⁷ There are several methods available to researchers, some of which include participant observation, statistical analysis, questionnaires, life histories, interviews, and document analysis. For this dissertation I utilized interviews and document analysis in order to collect appropriate data in support of addressing my conceptual framework and research question.

The second important question is what methodology will be employed? More specifically stated, what will be “the strategy, plan of action, process, or design” behind the choice and use of specific methods?¹⁰⁸ Examples of methodologies include experimental research, survey research, grounded theory, case study and, my approach for this study, policy analysis with blended characteristics of ethnography. For the current discussion my reference to ethnography aligns closely with what Grbich calls a “classical ethnographic approach” in that its use can be valuable when a researcher intends to “describe a culture and its operation, belief system, etc.” especially through “intensive analysis of a key event.”¹⁰⁹ Translated to my study, this means that my policy analysis intended to analyze the specific experience of Georgia Tech’s (the culture being studied) adoption of formalized background policy (the key event affecting the culture studied).

¹⁰⁷ Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (London; Thousand Oaks, Calif.: Sage Publications, 1998), 3.

¹⁰⁸ Ibid., 3.

¹⁰⁹ Carol Grbich, *Qualitative Data Analysis: An Introduction* (London; Thousand Oaks, Calif.: SAGE Publications, 2007), 39.

The third question qualitative researchers should ask is what theoretical perspective will support a research proposal? By theoretical perspective I mean “the philosophical stance informing the methodology and thus providing a context for the process and grounding it’s logic and criteria.”¹¹⁰ Some theoretical perspectives include positivism, postmodernism, and critical theory. Interpretivism is the theoretical perspective that informs my study of Policy 8.1. According to Yanow “from an interpretive perspective the evidentiary material that the researcher analyzes is constructed by participants in the event or setting being studied.”¹¹¹ Interpretivism can be understood when it is contrasted with the positivist approach. A positivist would employ the methods of the natural sciences and, by way of “allegedly value-free, detached observation, seek to identify universal features” of the phenomenon that offer explanation of “control and predictability.” The interpretivist approach, “to the contrary, looks for culturally derived and historically situated interpretations of the social world.”¹¹² To explain this contrast further, interpretivism is sometimes associated with the thought of Max Weber who suggested that “in the human sciences we are concerned with *Verstehen* (understanding).”¹¹³ Grbich claims that Weber’s interpretive approach, *Verstehen*, can be contrasted with his explicative approach (*Erklären*, explaining) which typically focuses on causality, often found in the natural sciences. My

¹¹⁰ Michael Crotty, *The Foundations of Social Research*, 3.

¹¹¹ Dvora Yanow "Qualitative-Interpretive Methods in Policy Research." In *Handbook of Public Policy Analysis: Theory, Politics, and Methods*, ed. Frank Fischer, Gerald Miller and Mara S. Sidney (Boca Raton: CRC/Taylor & Francis, 2007), 409.

¹¹² Ibid., 67. Similar (and related) to Crotty’s claim here, Birkland asserts that when studying the policy process itself it is important to keep in mind that “the actual act of identifying a problem is as much a normative judgment as it is an objective statement of fact; thus, if analysis proceeds from the identification of a problem, and the problem is identified normatively, then one cannot say that any subsequent analysis is strictly neutral.” Thomas A. Birkland, *An Introduction to the Policy Process: Theories, Concepts, and Models*, 15.

¹¹³ Max Weber, *Essays in Sociology*, trans. Hans Heinrich Gerth, and C. Wright Mills (New York: Oxford University Press, 1969). Cited in Carol Grbich, *Qualitative Data Analysis: An Introduction*, 67.

study revealed some the reasons or causes for Georgia Tech's decision to adopt formal background check policy; however, my purpose was situated within the interpretivist tradition in that my primary goal in analyzing Policy 8.1 was to seek understanding.

Finally, the fourth important question according to Crotty is what epistemology will inform a research proposal or what is "the theory of knowledge embedded in the theoretical perspective and thereby the methodology?" Examples of epistemologies include objectivism, subjectivism, and the epistemological stance for my study, social constructivism.¹¹⁴

Many authors of qualitative research have defined and discussed the nature and associated terminology of social constructivism. According to Grbich, constructivism assumes that "there is no objective knowledge independent of thinking" and reality is socially imbedded and existing entirely in the mind. This makes reality a moving target, because it is "fluid and changing" and is constructed "jointly in interaction by the researcher and the researched." Grbich claims (in alignment with my method and study's purpose/design) that the constructivist approach works well with studies that have characteristics of ethnography in that they can involve "thick contextualized description and textual perusal using discourse analysis." This is achieved through seeking "common patterns of meaning through preliminary and thematic analysis" with a major focus on "in-depth understanding of the problem and identifying related issues."¹¹⁵

Glesne suggests that a majority of qualitative researchers adhere to social constructivism or a constructivist paradigm and that "this paradigm maintains that human beings construct their perceptions of the world." The constructivist approach does not

¹¹⁴ Michael Crotty, *The Foundations of Social Research*, 3 & 67.

¹¹⁵ Carol Grbich, *Qualitative Data Analysis: An Introduction*, 8 & 9.

apply the scientific values of validity, objectivity, or generalizability “in the same way (or at all)” as in the traditions of a positivistic or logical empiricist approaches. In general, constructivists reject scientific inquiry that assumes it is possible to remain entirely objective. Constructivists “hold that knowledge of the world is not a simple reflection of what there is, but a set of social artifacts of what we make is there.”¹¹⁶

In summary, because I argue that reality is a social construct, it was important to understand that as I studied Policy 8.1, I viewed the policy itself as a socially constructed attempt to define the reality and rules that govern an administrative function of Georgia Tech. Policy 8.1, as it was created and re-created through revisions over time, is (and has been) connected to a broader social context. The normative and constitutive dimensions of my conceptual framework helped me to remain cognizant of this broader social context. For example, the importance of this broader social context was particularly reflected in my careful consideration of changing national social shifts supporting Policy 8.1 as well as state/federal laws and regulations that motivated and/or influenced creation of Policy 8.1.

Use of Interviews and Document Analysis

Responsive Interviewing

In my process of conducting interviews with important key constituents of Policy 8.1 I utilized an approach proposed by Rubin and Rubin. Their work emphasizes the importance of using a model called “responsive interviewing.” Responsive interviewing is Rubin and Rubin’s term for depth interviewing research. The responsive interviewing model “relies heavily on the interpretive constructionist philosophy, mixed with a bit of critical

¹¹⁶ Corrine Glesne, *Becoming Qualitative Researchers: An Introduction*, 3rd ed. (Boston: Pearson/Allyn & Bacon, 2006), 6-7.

theory, and then shaped by the practical needs of doing interviews.” This approach is somewhat the opposite of a strict positivistic approach in that the design of the process “remains flexible throughout the project” and the goal is not to reach definitive answers or truth, but rather to seek out how the interviewee “understands what they have seen, heard, or experienced.”¹¹⁷ According to the interpretive constructionist researcher, the goal of an interview is to find out how people perceive an occurrence or object and, most importantly, “the meaning they attribute to it.”¹¹⁸ It is imperative to note that this framework served as a “compass” and not a rule. Rubin and Rubin explain this importance in that

a philosophy should not be a list of commands or instructions to always do this or never that. Even the strongest advice may be offset in some situations by a broader good to be achieved. But, especially when you feel lost, having a compass -a research philosophy- is useful because it provides guidance, suggests what to pay attention to, and alerts you to problems that may arise.¹¹⁹

My interview technique included three types of questions; main questions, follow-up questions, and probes.¹²⁰ The main questions were designed to focus on the substance of the research problem and to stay on target with addressing my research puzzle. The follow-up and probe questions helped ensure that I pursued depth, detail, vividness, richness, and

¹¹⁷ Herbert J. Rubin and Irene Rubin. *Qualitative Interviewing: The Art of Hearing Data* (Thousand Oaks, Calif.: Sage Publications, 2005), 37. In conjunction with Rubin and Rubin I also followed the advice of Bardach. For an expanded discussion (and summary) on overcoming the common hurdles associated with recruiting and meeting with informants see his insightful comments on “strategic dilemmas of policy research.” Eugene Bardach, *A Practical Guide for Policy Analysis*, 75-93.

¹¹⁸ Ibid. p. 27

¹¹⁹ Ibid. p. 36-37

¹²⁰ Ibid. p. 129 *Main questions* are questions that are worked in advance to make sure all the major parts of the research problem are covered. *Follow-up questions* pursue concepts, themes, or events that the conversation has introduced and “frequently take the interviewer off in new directions,” p. 200 *Probes* are employed to “manage the conversation by keeping it on topic, signaling the desired level of depth, and asking for examples or clarification,” p.164 Rubin and Rubin describe eight examples of probe questions (continuation, elaboration, attention, clarification, steering, sequence, evidence, and slant probes) in their discussion of “Purpose and Wording of Probes.” p.164-171

nuance. Depth refers to “asking about distinct points of view while learning enough of the history or context” to be able to “put together separate pieces” of what I heard “in a meaningful way.”¹²¹ Seeking depth can lead to “richness” which means that “interviews can contain many ideas and different themes”, often including those that I did not anticipate being part of my study. Richness “allows depth interviewers to unravel the complexity of other people’s worlds.”¹²² The practice of seeking “vividness” is used to obtain narrative reports or to “request step-by-step descriptions of what happened,” whereas “nuance” implies that there are multiple shades of grey in interviewing and that it is important to look beyond just the black and white answers (by highlighting subtlety of meaning).¹²³

Utilizing my well-developed professional relationships with multiple Georgia Tech Offices across campus, I identified current and former campus staff members that have had a strong association with Policy 8.1.¹²⁴ My initial interviews led me to others allowing the responses of my interviewees guide me to new data. In order to stay organized throughout my interview field work, I created an interview guide which compiled a checklist of important interview procedures and my main interview questions (with notes about follow-up and probe questions).¹²⁵ Using the model provided by the Georgia State University Research Services and Administration Office I created an informed consent document for all

¹²¹ Ibid. p. 130 Rubin and Rubin discusses the important of ‘depth’ and profess that “When you are looking for depth, you also seek explanations from conversational partners who have had diverse experiences or hold different opinions.” p. 131

¹²² Ibid. p. 134

¹²³ Ibid. p. 132 Rubin and Rubin define vividness as coming from “asking background questions and learning enough about the overall context to personalize your report so that you can present your interviewees as real people rather than abstractions.”

¹²⁴ I discuss in detail my career experience (and how this impacted my approach to this study) at Georgia Tech in detail later (see chapter “Positional and Political Considerations”).

¹²⁵ See appendix G for my interview guide and preparation checklist

my interviews.¹²⁶ It is important to note that my data collection process included acquiring approval from the Georgia State University Institute Review Board (IRB). Using an IRB approved informed consent document I was able to obtain formal consent to conduct my interviews from all my participants.¹²⁷

Document Analysis

Document analysis was used as my main method of data collection and analysis. Interviewing, as discussed above was an additional method, however my interviews eventually became documents after each interview was transcribed and converted into written form.¹²⁸ Lindsay Prior has conducted extensive work on the use of documents in research and claims that “in most social scientific work, of course, documents are placed at the margins of consideration.”¹²⁹ Yet as articulated by Max Weber’s perceptive analysis of bureaucracy (as noted by Prior), “The modern world is made through writing and

¹²⁶ See Georgia State University Research Services and Administration at: http://www.gsu.edu/research/human_subjects.html

¹²⁷ My consent document also asked specifically for permission to use my participant’s real names. There is no use of pseudo names in this dissertation as all my participants consented to my request to use their real names and professional titles.

¹²⁸ As Bardach reminds us, “In policy research, almost all likely sources of information, data, and ideas fall into two general types: documents and people.” Eugene Bardach, *A Practical Guide for Policy Analysis*, 69. I also found good use of document advice in Yanow’s assertion that “document reading can also be part of an observational study or an interview-based project. Documents can provide background information prior to designing the research project, for example prior to conducting interviews. They may corroborate observational and interview data, or they may refute them, in which case the researcher is ‘armed’ with evidence that can be used to clarify, or perhaps, to challenge what is being told, a role that the observational data may also play.” Dvora Yanow “Qualitative-Interpretive Methods in Policy Research.” In *Handbook of Public Policy Analysis: Theory, Politics, and Methods*, 411.

¹²⁹ Lindsay Prior, *Using Documents in Social Research* (London: Sage Publications, 2003), 4.

documentation.”¹³⁰ Prior provides insightful discussion regarding the nature of documents in organizations:

- Documents form a field for research in their own right, and should not be considered as mere props for action.
- Documents need to be considered as situated products, rather than as fixed and stable things in the world.
- Documents are produced in social settings and are always to be regarded as collective (social) products.
- Determining how documents are consumed and used in organized settings, that is, how they function, should form an important part of any social scientific research project.
- In approaching documents as a field for research we should forever keep in mind the dynamic involved in the relationships between production, consumption, and content.¹³¹

A University's Identity Defined through Documents

What characteristic about any organization gives it identity and separation from other similar or completely different organizations? How are these characteristics defined and given unmistakable meaning? What about the identity of a university? Prior offers the following perspective:

A university (any university) is in its documents rather than its buildings. The charter together with other documents names the university, provides warrant to award degrees, and legitimizes the officers of the university and so on. Naturally, a university has buildings and equipment and lectures and students, but none of those things are sufficient for the award of university status. Only the charter can define

¹³⁰ Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth, and Claus Wittich (Berkeley: University of California Press, 1978), 957. Cited in Lindsay Prior, *Using Documents in Social Research*, 4.

¹³¹ Lindsay Prior, *Using Documents in Social Research*, 26.

the organization as a university, and in that sense provide the one necessary condition for its existence.¹³²

If this perspective holds true, this places documents (and the act of documentation) in a very important position among universities. If the charter is the supreme identifying document, then a university's formal policies and correspondences must also hold a very high level of importance.

Advantages and Limitations of Document Analysis

Caulley asserts, in alignment with Prior's similar claims about documents in research, that "though document analysis is routinely carried out in program evaluation, its full potential is rarely tapped" and the resources and "literature on the subject of document analysis is very meager."¹³³ In its most rudimentary form it is "analysis of documents to gather facts." However, gathering of facts through document analysis is not an easy endeavor. Caulley warns that "the facts of history and evaluation never come to us 'pure,' since they do not and cannot exist in a pure form; they are always refracted through the mind of the recorder" especially since the facts we find in documents "have been selected by the recorder." Because of this, our major concern "should be with the selective device through which the facts were churned; what facts were selected to be written down and which were rejected?"¹³⁴ When I entered the field to gather documents related to Policy 8.1, I was confronted with important decisions as to which documents are more important

¹³² Ibid., 60.

¹³³ Darrel N Caulley, "Document Analysis in Program Evaluation," *Evaluation and Program Planning* 6, no. 1 (1983): 28.

¹³⁴ Ibid., 19 & 20.

and/or relevant than others. Caulley offers a few general rules/guidelines for selecting appropriate documents:

- Incomplete observation and faulty memory are reasons for inadequacy of testimony. The longer the *time interval* between the incident described and the writing of the document, the less reliable the document. *Therefore, choose the document that is closer to the event described.*
- Some documents are intended as aids to one's memory, some are reports to others, some as apologia, some as propaganda, and so on. So documents differ as to their purpose. The more serious the writer's intention to make a mere record, the more dependable the document.
- The testimony of a schooled or experienced observer and reporter is generally superior to that of the untrained and casual observer and reporter.¹³⁵

Caulley also cautions about "interested witnesses." An interested witness can be an author of a document where the document serves as a "perversion of the truth" in order to support or "benefit someone or some cause dear to himself or herself." For example, brochures that promote educational programs are biased and usually do not provide balanced information about the effectiveness or credibility of the program. To complicate this circumstance further, "often the benefit to be derived from the perversion of the truth is subtle and may not be realized."¹³⁶ Murphy recommends that when evaluating a program, the researcher should focus on records that report "about its origin, history, operation, and impact." More specifically, a researcher should seek "copies of the law, rules, regulations, guidelines, and legal interpretations" that help to "set forth the legal basis forth the

¹³⁵ Ibid., 23.

¹³⁶ Ibid., 24.

program.”¹³⁷ Other examples of important program documents include annual reports, financial statements, newsletters, budget justifications, and especially “documents on the inner workings of programs.” Documents of this kind can include minutes of meetings, organizational charts, staff reports, and, of particular importance to Caulley, memoranda. Memoranda are “a particular rich source of information since this is the primary means of communication for program personnel.” In addition, memoranda “reveal the information on which decisions are made, the arguments for such decisions, and who is making the decisions.” A savvy researcher will also pay particular attention to the distribution lists on memoranda as this often gives strong indications as to “who is important in making decisions and thus who might be interviewed for further information.”¹³⁸

Positional and Political Considerations

Dewalt and Dewalt's Degrees of Participation

Dewalt and Dewalt argue that “the degree of participation, membership role, and the amount of emotional involvement that ethnographers bring to the field will have an important impact on the kinds of data collected and the sort of analysis that is possible.”¹³⁹ In agreement with this assertion, the following is designed to explain the complexity of my relationship and position (both level of involvement and awareness of its advantages and disadvantages) with Georgia Tech. As a Georgia Tech employee for approximately the past ten years, I consider myself not only an ethnographer of Policy 8.1, but also a participant

¹³⁷ Jerome T. Murphy, *Getting the Facts, a Fieldwork Guide for Evaluators and Policy Analysts* (Santa Monica, Calif.: Goodyear Pub. Co., 1980), 123. Cited in Darrel N Caulley, "Document Analysis in Program Evaluation," 25.

¹³⁸ Darrel N Caulley, "Document Analysis in Program Evaluation," 25.

¹³⁹ Kathleen M. Dewalt and Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers* (Walnut Creek, CA: AltaMira Press, 2002), 24.

highly involved with its creation. My levels of direct involvement with Policy 8.1 have changed over the past several years, so articulation of my awareness of these changes is definitely warranted.

In Dewalt and Dewalt's participant observation work they explain that there are multiple levels of participation. Referencing Bernard, Dewalt and Dewalt explain that "Participant observation should be distinguished from both pure observation and pure participation." Used by some sociologists and psychologists, pure observation attempts to remove the researcher (to the maximum extent possible) from the activities and interactions being observed so the researcher is unable to influence the dynamics of the circumstances being observed. The other end of this extreme, pure participation, is sometimes referred to as "going native." This expression describes a researcher when he/she "sheds the identity of investigator and adopts the identity of a full participant in the culture." Unfortunately, (and for many good reasons) this "is generally associated with a loss of analytic interest and often results in the inability of the researcher to publish his/her materials."¹⁴⁰

In order to construct a method to gauge a researcher's place between these two extremes, Dewalt and Dewalt recruit a typology developed by Spradley. Dewalt and Dewalt believe that "Spradley's categories seem to confound the degree of participation with the degree to which an ethnographer becomes emotionally involved," and while these are related, "these can and should be separated." Modifying Spradley's categories (focusing only on the aspects of participation), Dewalt and Dewalt discuss several levels of participation that can act as a useful guide for uncovering a researcher's stance within a study. These

¹⁴⁰ Russell H. Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* 2nd ed. (Thousand Oaks, CA: Sage Publications, 1994). Cited in Kathleen M. Dewalt and Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers*, 18.

levels are non-participation, passive participation, moderate participation, active participation, and complete participation.¹⁴¹

Non-participation, the first level, occurs “when cultural knowledge is acquired by observing phenomena from outside the research setting.” Examples of this type of participation can include viewing television, reading magazines or similar texts, and other forms of media. Passive participation (level two) exists when the researcher is physically at the location where observations are being made but he/she “acts as a pure observer.” That is, the researcher “does not interact with people.” Even though the researcher still has no interaction, as in non-participation, this level elevates the researcher’s involvement because he/she is on site and can/does have an option to interact if he/she chooses. The third level is referred to as moderate participation. This occurs when the researcher is “at the scene of action, is identifiable as a researcher, but does not actively participate, or occasionally interacts, with people in it.” Active participation (the fourth level) happens when a researcher “actually engages in almost everything that other people are doing as a means of trying to learn the cultural rules for behavior.” This level has a much greater level of immersion of the researcher into the setting he or she is observing, but still the researcher holds tightly to his/her objectivity and is not yet considered a full member of the culture being studied. Finally, the step beyond active participation is complete participation. At this level of participation the researcher actually “becomes a member of the group being studied.”¹⁴²

¹⁴¹ James P. Spradely, *Participant Observation* (New York: Holt, Rinehart and Winston, 1980), 58-62. Cited in Kathleen M. Dewalt and Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers*, 19.

¹⁴² Kathleen M. Dewalt and Billie R. DeWalt, *Participant Observation: A Guide for Fieldworkers*, 19-21.

This fifth level of participation is not to be confused with the expression “going native” explained above, because in complete participation the researcher does not lose the analytic interest needed to be regarded as a credible researcher. Dewalt and Dewalt summarize the importance of these categories:

The balance between observation and participation achieved by an individual researcher can fall anywhere along the continuum. The key point is that researchers should be aware of the compromises in access, objectivity, and community expectations that are being made at any particular place along the continuum. Further, in the writing of ethnography, the particular place of the researcher on this continuum should be made clear. Methodological notes, field notes, and diary entries should report the level of involvement of the researcher in the community or group being studied, and the degree to which the researcher comes to identify with the community.¹⁴³

Researcher Connection with Georgia Tech

My career at Georgia Tech (and in the field of human resources management) formally began in April, 2001. Early in my involvement with Policy 8.1, I worked in Georgia Tech’s Office of Human Resources (around January 2005) where I was assigned to draft the first Georgia Tech policy devoted to assigning a campus code of conduct for pre-employment background investigations. This heavily immersed me in the creation, implementation, and campus enforcement of Policy 8.1. In this assignment I was held accountable for comparing other higher education pre-employment background check policies; researching all the applicable laws, regulations, and risks involved with adopting such policy; and recruiting a reputable third-party company to contract with and conduct Georgia Tech’s pre-employment background check investigations. During this time (for

¹⁴³ Ibid., 23.

approximately a two and a half year period), this placed my level of participation in alignment with Dewalt and Dewalt's complete participation (as an active member of the culture being studied).

My level of participation with Georgia Tech's Policy 8.1 changed in May of 2007. At that time I was promoted to a position in the Georgia Tech economic development office as the unit's Human Resources Manager. This was an important personal and professional change for me and my study, because it shifted my level of involvement/participation (more in alignment with third level or moderate participation) with the Georgia Tech's Office of Human Resources and Policy 8.1. After my employment change, I was no longer responsible for managing the administration of Policy 8.1, and I lost much of my insider status with the Georgia Tech Office of Human Resources. However, one of the benefits of leaving the Georgia Tech Office of Human Resources came in the form of an increased separation from my personal attachment to Policy 8.1. No longer being responsible for managing Policy 8.1 allowed me to research and digest the competing arguments for and against background check policy more effectively, because my livelihood no longer depended on the success of the program. Bogdan and Biklen explain that "exactly what and how much participation varies during the course of a study." In the beginning, researchers usually spend time teaching the community they are involved with and gradually gain acceptance and often a level of membership. "As relationships develop, he or she participates more," which was exactly the case in my six years (from April, 2001 to May, 2007) of employment with Georgia Tech's Office of Human Resources. At later stages of the research, "it may be important once again to hold back from participating," because too

much participation can lead to “the researcher getting so involved and active with subjects that their original intentions get lost.”¹⁴⁴

Background Checks as a Controversial Topic

Along with awareness of my participation levels, it was also important for me to keep in mind that background checks (and the broader issue of unresolved tensions between privacy and security) are controversial and potentially politically charged topics. Because of this, remaining neutral was sometimes a challenge. According to Bogan and Biklen, “It is not uncommon for human service organizations to have dissention and political wrangling.”¹⁴⁵ Those occupying non-academic business leadership positions within Georgia Tech generally advocate for universally utilized extensive pre-employment background checks for all new hires (including professorships). However, the American Association of University Professors (AAUP) has expressed great concern regarding any forced change in the manner in which academia recruits and selects new members for employment positions. This tug of war between business and academia leaders in higher education added additional concerns that were important for me to keep in mind throughout my study. Bogdan and Biklen warn that

in organizations with conflict, people may vie for your allegiance, wanting you to identify with one side or the other. They try to convince you that the way they see things is right and that you should join them in their struggle against those they define as the enemy. Although as a strategy it is trying at times, and close to impossible at others, in general it is best to remain neutral. If you identify with one side, it will be difficult to understand or have access to the people on the other side. .

¹⁴⁴ Robert Bogdan and Sari Knopp Biklen. *Qualitative Research for Education: An Introduction to Theory and Methods*, 5th ed. (Boston: Pearson/Allyn and Bacon, 2007), 92.

¹⁴⁵ *Ibid.*, 100.

. . Spread yourself around, spending time with various people. Have a sympathetic ear to all sides and do not talk about one group in front of the other.¹⁴⁶

Summary of Research Approach, Methodology, & Method

Developed by Cooper, Fusarelli, and Randall my conceptual framework consisted of considering four important policy dimensions including the normative, structural, constitutive, and technical dimensions. This framework served as a basis and focus shaping my research process, informing the methodological design, and influencing the selection of data-collection instruments. I utilized Michael Crotty's four basic research design questions as a basis for making crucial decisions my research approach. In summary, I conducted my research through the lens of the social constructivist (epistemology) adopting an interpretivist approach (theoretical perspective) utilizing a policy analysis methodology which included the use of interviews and document analysis (methods) to address my research question. Using my conceptual framework as a guide I interviewed (and analyzed transcript reports of) five constituents with important relationships with Policy 8.1. I also analyzed all available/related official policy documents, reports, financial statements, and program statistics associated with Georgia Tech's Pre-employment Background Check Program.

Dewalt and Dewalt's continuum of participation levels served as a viable tool for me to gauge where I have been situated in connection with Policy 8.1 at different times during my study. In the beginning of my study I took full advantage of my insider status as an accepted active member with everyone involved with the creation of Policy 8.1. This has allowed relatively easy access too many internal Georgia Tech Office of Human Resources

¹⁴⁶ Ibid., 100.

staff and documents associated with Policy 8.1. However, it was also important for me to remain aware that my close insider status at the time included a personal and emotional attachment regarding my interest in the success of Policy 8.1. When this close connection decreased in May-2007, I became much more equipped to study Policy 8.1 from a more neutral stance keeping in mind the potential political considerations as discussed by Bogdan and Biklen.

CHAPTER 5

DATA INVENTORY & ANALYSIS TECHNIQUE

Data Inventory

Policy 8.1 Releases

The Policy 8.1 releases comprised the formal policy statements that the Georgia Tech Office of Human Resources (referred to as OHR, where appropriate, for the remainder of this dissertation) published to the campus on four separate occasions. These included the first release in June 2005 and each subsequent revision released in October 2007, November 2009, and May 2010. Analysis of each of these policy statements offered evidence of changes implemented in response to what was learned from each previous release.

Interview Transcripts

My data collection through interviewing relevant constituents associated with Georgia Tech's Pre-Employment Background Check Policy and Program produced five robust interview transcripts.¹⁴⁷ Participants I successfully recruited for interviews include (all of whom consented to using their real names and titles):

- (1) Russ Cappello, former (retired as of 2004) Director of Employment and Employee Relations for Georgia Tech's Office of Human Resources;
- (2) Dr. Jean Fuller, former (retired as of 2006) Director of Employment and HR Policy for Georgia Tech's Office of Human Resources;

¹⁴⁷ I also tried to contact Dr. Hugh Hudson, former Executive Secretary for the AAUP, Georgia Chapter and Professor of History at Georgia State University; however, he did not respond to my requests for an interview.

- (3) Scott Morris, current (hired in January, 2011) Associate Vice President of Human Resources for Georgia Tech's Office of Human Resources;
- (4) Rick Clark, current Director of Admissions for Georgia Tech's Office of Undergraduate Admissions (2009-Present); and
- (5) Erroll Davis, former Chancellor of the University System of Georgia (2006-2011).¹⁴⁸

A Compass and Not a Rule

As described previously, I utilized the “responsive interviewing” approach advocated by Rubin and Rubin. It is imperative to re-emphasize that this framework served as a “compass” and not a rule. This approach is nearly the opposite of a strict positivistic approach in that the design of the process “remains flexible throughout the project” and the goal is not to reach definitive answers or truth, but rather to seek out how the interviewee “understands what they have seen, heard, or experienced.”¹⁴⁹ My interview technique included three types of questions; main questions, follow-up questions, and probes.¹⁵⁰ I purposely had very few main questions with the intention of allowing each interviewee to guide his/her interview as much as possible as long as they stayed on topic. I utilized many follow-up and probe questions to seek depth, detail, vividness, richness, and nuance. My

¹⁴⁸ This interview was particularly relevant as Bardach describes that in policy analysis it is often good practice to seek out “the political ideology of the agency chief.” Eugene Bardach, *A Practical Guide for Policy Analysis*, 11.

¹⁴⁹ Herbert J. Rubin and Irene Rubin. *Qualitative Interviewing: The Art of Hearing Data*, 37.

¹⁵⁰ Ibid. p. 129 *Main questions* are questions that are worked in advance to make sure all the major parts of the research problem are covered. *Follow-up questions* pursue concepts, themes, or events that the conversation has introduced and “frequently take the interviewer off in new directions.” p. 200 *Probes* are employed to “manage the conversation by keeping it on topic, signaling the desired level of depth, and asking for examples or clarification.” Rubin and Rubin describe eight examples of probe questions (continuation, elaboration, attention, clarification, steering, sequence, evidence, and slant probes) in their discussion of “Purpose and Wording of Probes.” p.164-171

follow-up and probe questions also helped each interviewee stay on target with the focus of my study.¹⁵¹

After completing all my interviews, I found that each provided a variety of avenues in addressing each dimension of my conceptual framework. However, there were differences in each of the interviews (and interviewees) that are important to note. For example, my interviews with Russ Cappello and Jean Fuller primarily focused on talking about Policy 8.1 before it was adopted as a formal written policy in June, 2005. Logically this made sense because Russ retired from Georgia Tech in early 2004, and Jean retired approximately two years later. In contrast, my interviews with Rick Clark and Scott Morris contained a lot of discussion about the current version of Policy 8.1 after its three revisions spanning from 2007-2010. Due to the fact that Scott Morris only recently started his employment at Georgia Tech (in January, 2011) our conversation was dominated mostly with discussion of his thoughts about how to improve the current Policy 8.1 (for which he is now directly responsible as the new Associate Vice President of Human Resources). In my interview with Rick Clark, Director of Georgia Tech Admissions, the majority of our interview discussed students and the screening process his office uses during matriculation. Finally, my interview with Erroll Davis mainly discussed his decision to implement background check policy at the BOR level.

InfoMart Reports

When Policy 8.1 was being created, the Georgia Tech Office of Human Resources contracted the process of obtaining and reporting applicant background information to an Atlanta-based company called InfoMart Inc. Upon my request, InfoMart provided me with

¹⁵¹ For a review of the specific purposes of depth, detail, vividness, richness, and nuance, see my previous more elaborate discussions of each (see: “Use of Interviews”).

several monthly and annual background check activity reports, as well as financial data that detailed the costs associated with their services. These records provided valuable historical program statistics and cost documentation of Georgia Tech's OHR Background Check Program. These statistics and financial figures are reported in Appendixes A-F.¹⁵²

Supplementary Documents

Additional documents, which I refer to as supplementary documents, were documents discovered through following leads produced from my interviews and literature review. These documents are referred to as supplementary because although they were not specific to Policy 8.1, these documents helped in adding additional context to each of the four dimensions of my conceptual framework. These documents include:

- (1) A January 18th, 2007 letter to USG Chancellor Erroll Davis from Hugh Hudson (former Executive Secretary of the AAUP, Georgia Chapter) expressing concerns regarding the 2007 USG mandate for a system-wide pre-employment background check policy;
- (2) A September 11th, 2007 memorandum from Rob Watts of the USG to all USG Presidents and Chief Business Officers articulating recent revisions to the USG Background Check Policy (which includes a copy of the 2007 USG Policy);
- (3) May 23rd, 2011 version of USG Background Investigation Policy;

¹⁵² Appendix A provides historical financial charges Georgia Tech incurred from InfoMart for years 2005-2011 as well as the package and individual fees that InfoMart charges for its services; Appendix B provides background check criminal history statistics for 2005; Appendix C provides background check criminal history statistics for 2006; Appendix D provides background check criminal history statistics for 2007; Appendix E provides background check criminal history statistics for 2008; Appendix F provides background check criminal history statistics for 2009. It is important to note that InfoMart began conducting background checks for Georgia Tech in June 2005. Due to this mid-year start in 2005 the annual data for this year should not be used as a direct comparison for the other years reported. Also, in October 2009 Georgia Tech transitioned to a different company that was mandated by the USG as the system-wide contracted background checking service provider. InfoMart remains contracted with Georgia Tech for applicant substance abuse screening; however, InfoMart no longer administers criminal histories, social security verifications, driving history searches, credit checks, or education verifications as it did from June, 2005 to October, 2009.

(4) The 2010 Georgia Tech Fact Book, available online and published annually by the Office of Institutional Research and Planning.¹⁵³

(5) The 2010 Georgia Tech Mini Fact Book, available online and published annually by the Office of Institutional Research and Planning.¹⁵⁴

(6) Various official online governmental documents used to analyze important federal laws and regulations that directly impact Policy 8.1;

(7) Various personal analytical documents including my field notes, important annotations from related readings, written and electronic (using Nvivo qualitative data analysis software) journal entries, analytic memos, etc. created throughout my study to guide and steer my reflections.

Data Analysis Technique

My method of data analysis, through the lens of a constructivist, involved using descriptive and evaluative coding of my interview transcripts and relevant documents associated with Policy 8.1. Using my conceptual framework as an initial starting point, and NVivo data analysis software as a supplementary tool, I organized and coded my data as it related to the four major categories (or dimensions) of my conceptual framework. As my coding progressed, I categorized codes that shared similarities, threading them into groups that logically and intuitively fit together. Working with these categories/groups, I utilized analytic memo writing and searched for pertinent information that led me toward a deeper

¹⁵³ Available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_Factbook.pdf Internet; accessed 12 September 2011.

¹⁵⁴ Available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_MiniFB.pdf Internet; accessed 12 September 2011.

understanding of the experiences, history, challenges, and changes associated with background check policy at Georgia Tech.

NVivo Qualitative Data Analysis Software

As suggested by my dissertation committee, for this study I utilized NVivo Qualitative Data Analysis Software (QDAS) as a supplementary tool for organizing my data. According to Patricia Bazeley there are several principal ways in which NVivo supports analysis of qualitative data, however my use of the software aligned mainly with Bazeley's assertion that NVivo "manages data" in general in that the software serves as a central repository for all information collected. According to Bazeley NVivo "manages ideas" providing "rapid access to conceptual and theoretical knowledge.... as well as the data which supports it, while at the same time retaining ready access to the context from which those data have come." Simply being able to view and recall my data, notes, references, etc. all in one place (and at the same time if needed) allowed me to focus more on coding and thinking about my data rather than organizing (& re-organizing) it. This was valuable to my research, because I also utilized paper and pencil coding (which I will discuss in detail later in this chapter) in conjunction with the Nvivo data organizing features. Finally, it is important to note that NVivo and the tools described by Bazeley are "method free insofar as the software does not prescribe a method, but rather it supports a wide range of methodological approaches."¹⁵⁵ This highlights NVivo's flexibility in that researchers are not locked into using any (or all) the system's features in order for it to serve as a viable tool.

¹⁵⁵ Patricia Bazeley, *Qualitative Data Analysis with NVivo* 3 ed. (Los Angeles, Calif.: Sage Publications, 2007), 2-3.

Bazeley reminds us that there are debates surrounding the use of software for qualitative data analysis. First, there are those who believe that using computers will over mechanize the analysis process. Those who support this notion fear that the computer, “like Frankenstein’s monster, might take over the process and alienate researchers from their data” and further “produce output without making obvious all the steps in the process.”¹⁵⁶ Also, Bazeley refers to what she calls a “homogenization of qualitative approaches to analysis” which is a tendency of researchers “to imply there is just one general approach to the analysis of qualitative data.” However, qualitative is not a single method in and of itself and there are “marked differences in qualitative approaches which stem from differences in foundational philosophies and understandings of the nature of social reality.” It is up to researchers, not software programs, to incorporate their choices of perspective and conceptual framework regarding coding technique, “and what questions to ask of the data.” Unfortunately, qualitative data analysis software “has been talked about as if it supported just one qualitative methodology, or worse, that it created a new method” which is not the case at all.¹⁵⁷

Concerns have been raised related to a researchers “closeness and distance” from their data, and early critiques have suggested that users of software data analysis lose a closeness to their data “through segmentation of text and loss of context, and thereby risk alienation from their data.” In contrast some argue that the combination of using several electronic devices (tape recorders, software, etc.) can lead a researcher toward “too much closeness, and some users become caught in ‘the coding trap’, bogged down in their data,

¹⁵⁶ Ibid., 9-10.

¹⁵⁷ Ibid., 10-11. Bazeley explains further that in her own experience she has taught use of NVivo “to people in disciplines ranging from natural sciences through social sciences, business and the professions to creative arts. Each has been able to find tools in NVivo to support their work.”

and unable to see the larger picture.” Bazeley argues that researchers can, and should, benefit through achieving both closeness and distance, “and an ability to switch between the two.... closeness for familiarity and appreciation for subtle differences, but distance for abstraction and synthesis.”¹⁵⁸ Being conscious of these potential pitfalls associated with utilizing qualitative data analysis software I used a hybrid approach to my data analysis technique. I use the term hybrid because while I used NVivo a great deal in organizing my data I also employed a more traditional paper and pencil coding system that helped me retain a comfortable level of closeness to my data.

The Mechanics of My Coding

Saldaña defines a code in qualitative inquiry as “most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data.” The intentions of coding are similar to an assigned title which “represents and captures a book, film, or poem’s primary content and essence.” There are many forms of data receptive to the coding process including interview transcripts, participant observation field notes, journals, documents, literature, email correspondences, etc. It is important to understand that coding is “not a precise science”, rather it is “primarily an interpretive act” meant to be “the transitional process between data collection and more extensive data analysis.”¹⁵⁹ For example, my coding process involved using descriptive and evaluative coding which helped lead me to grouping of important categories within my data. I made notes along the margins of my paper documents and

¹⁵⁸ Ibid., 8.

¹⁵⁹ Johnny Saldaña, *The Coding Manual for Qualitative Researchers*; Thousand Oaks, Calif.: Sage Publications, 2009, 3-4. The “more extensive data analysis” mentioned here is/will be accomplished through analytic memo writing. Coding is a technique used as a starting point, bridging the analytic process from simpler to more complex modes of thinking.

interview transcripts of these categories which helped to capture emerging themes or concepts. Saldaña demonstrates this process, which I used as a guideline in my analysis technique, using what he calls a streamline codes-to-theory model for qualitative inquiry.¹⁶⁰

Descriptive and Evaluative Coding

Coding is cyclic in nature, sometimes requiring multiple cycles using different coding methods in order to develop potential themes. Saldaña offers dozens of coding options for qualitative researchers. I considered all of them and determined that descriptive and evaluative coding provided the most utility for my study. However, I used this approach as a guideline and not a strict rule. During my data analysis, I employed characteristics of other coding methods, especially since the nature of coding (and qualitative research in general) is flexible and should remain adaptive. During my coding process, I also continually asked myself (in alignment with Saldaña), “as you’re applying the coding method(s) to the data, are you making new discoveries, insights, and connections about your participants, their processes, or the phenomenon under investigation?”¹⁶¹

Saldaña recommends descriptive coding specifically for studies involving document analysis as these types of studies often begin with general questions. Descriptive coding as a preliminary data analysis tool is a viable approach in addressing these types of questions. More specifically, descriptive coding “summarizes in a word or short phrase, most often as a noun, the basic topic of a passage of data.” Descriptive coding “leads primarily to a categorized inventory, tabular account, summary, or index of the data’s content.” Using my conceptual framework as a starting point, this first cycle coding method provided essential

¹⁶⁰ Ibid., 12. See Figure 1.1 for the streamline codes-to-theory model for qualitative inquiry.

¹⁶¹ Ibid., 51.

groundwork for additional cycles of coding, further analysis, and deeper interpretation because “description is the foundation for qualitative inquiry.”¹⁶²

Evaluation coding, as Saldaña describes it, is another valuable analysis method, because although my study’s focus is on a specific Georgia Tech policy, typically a higher education policy is associated with or connected in some way to a program or administrative function within the institution. My study of Policy 8.1 implicitly included an evaluative investigation of Georgia Tech’s Office of Human Resources Pre-Employment Background Check Program. Evaluation coding is “appropriate for policy, critical, action, organizational, and (of course) evaluation studies,” and this type of data “can derive from individual interviews, focus groups, participant observation, surveys, and documents.”¹⁶³ The benefits of this approach were directly aligned with one of the main purposes of my study which was to create a documented vicarious experience for higher education policy-makers and HR professionals to use as an analogous situation in order to formulate more informed decisions regarding the use or non-use of same or similar policy. According to Michael Patton, program evaluation is “the systematic collection of information about the activities, characteristics, and the outcomes of programs” in order to “make judgments about the program, improve the program effectiveness, and/or inform decisions about future programming.” Program evaluation can include analysis of the policies, organizations, and personnel associated with the program.¹⁶⁴

¹⁶² Ibid., 70-72.

¹⁶³ Ibid., 98 & 100.

¹⁶⁴ Michael Quinn Patton, *Qualitative Research and Evaluation Methods* 3 ed. (Thousand Oaks, Calif.: Sage Publications, 2002), 10. Cited in Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 97.

Analytic Memo Writing

Coding, as described earlier, is primarily an interpretive act meant to be the transitional process between data collection and more extensive data analysis. Coding lays the groundwork for uncovering patterns and developing themes toward greater understanding of data. Grbich claims that “thematic analysis” is a common qualitative research technique and it is usually employed at or near the end of the data collection process. It is a process that involves “segmentation, categorization, and re-linking of aspects of the database prior to the final write up.”¹⁶⁵ According to DeSantis and Ugarriza, a theme is “an abstract entity that brings meaning and identity to a recurrent (patterned) experienced and its variant manifestations.” Used in this manner, a theme “captures and unifies the nature or basis of the experience into a meaningful whole.”¹⁶⁶ Finally, according to Van Manen,

themes are interpretive, insightful discoveries, written attempts to get at the notions of data to make sense of them and give them shape. Overall, a theme is the form of capturing the phenomenon one tries to understand, but the collective set of researcher-generated themes is not intended for systematic analysis; themes are the fasteners, foci, or threads around which the phenomenological description is facilitated.¹⁶⁷

I used analytic memo writing to search for patterns and themes, as described above, in order to help gain a deeper understanding of the experiences and challenges associated

¹⁶⁵ Carol Grbich, *Qualitative Data Analysis: An Introduction*, 16.

¹⁶⁶ Lydia DeSantis and Doris Noel Ugarriza, "The Concept of Theme as Used in Qualitative Nursing Research," 22, no. 3 (2000): 351-372, (quote on p. 362). Cited in Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 139.

¹⁶⁷ Max Van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (Albany, N.Y.: State University of New York Press, 1990), 87. Cited in Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 140.

with background check policy at Georgia Tech. These memos served as bridges designed to move my codes toward more analytic thought about my data. According to Saldaña, the purpose of analytic memo writing is to record and reflect on the coding process and choice of codes; “how the process of inquiry is taking shape; and the emergent patterns, categories and subcategories, themes and concepts in your data.” Examples of acceptable content for analytic memos include “future directions, unanswered questions, frustrations with the analysis, insightful connections, and anything about the researched and the researcher.”¹⁶⁸

Finally Charmaz advises that

memos catch your thoughts, capture the comparisons and connections you make, and crystallize questions and directions for you to pursue. Through conversing with yourself while memo writing, new ideas and insights arise during the act of writing. Putting things down on paper makes the work concrete, manageable, and exciting. Once you have written a memo, you can use it now or store it for later retrieval. In short, memo writing provides a space to become actively engaged in your materials, to develop your ideas, and to fine-tune your subsequent data-gathering.¹⁶⁹

Summary of Data Inventory and Analysis Technique

In summary, my hybrid data analysis approach utilized NVivo software to organize my data and my paper and pencil method of analysis, in alignment with Saldaña’s streamline codes-to-theory model for qualitative inquiry, involved using descriptive and evaluative coding of all obtainable documents (which included my interview transcripts) associated with Policy 8.1. As my coding progressed, I categorized codes that shared similarities, threading them into groups that logically and intuitively fit together. Working with these

¹⁶⁸ Johnny Saldaña, *The Coding Manual for Qualitative Researchers*, 32 & 33.

¹⁶⁹ Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (London; Thousand Oaks: SAGE, 2006), 72.

categories/groups, I searched for emerging patterns and themes through analytic memo writing. This allowed me to structure a re-creation of the experiences and challenges that influenced related constituents of Policy 8.1 to consider, adopt, modify, and improve formal background check policy at Georgia Tech.

CHAPTER 6

POLICY 8.1: DATA & ANALYSIS

The technical dimension of my conceptual framework formed the main crux of my research in my analysis of each of the four versions of Policy 8.1. However, in this chapter, I provide discussions surrounding how I used my data to gain a deeper understanding of Policy 8.1 through all four dimensions of my conceptual framework. For example, the normative dimension included gaining an understanding of Georgia Tech's organizational mission and cultural make-up. This was important because according to Cooper, Fusarelli, and Randall the normative dimension of understanding organizational policy "includes the beliefs, values, and ideologies that drive societies to seek improvement and change." Also, according to Cooper, Fusarelli, and Randall, the structural dimension "includes the governmental arrangements, institutional structure, systems, and processes that promulgate and support policies."¹⁷⁰ Therefore, focus on this dimension included exploring the organizational structure and general demographics of Georgia Tech as well as how the Institute fits within the University System of Georgia.

Georgia Tech Mission and Demographics

Georgia Tech's organizational mission reads as follows:

Technological change is fundamental to the advancement of the human condition. The Georgia Tech community - students, staff, faculty, and alumni - will realize our motto of "Progress and Service" through effectiveness and innovation in teaching and learning, our research advances, and entrepreneurship in all sectors of society.

¹⁷⁰ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 43-44.

We will be leaders in improving the human condition in Georgia, the United States, and around the globe.¹⁷¹

Georgia Tech is accredited by the Southern Association of Colleges and Schools to award bachelors, masters, and doctoral degrees.¹⁷² Georgia Tech's science and technology academic culture is reflected in the College of Engineering's dominance in 2010 student enrollment. Of the total 13,750 undergraduate students 8,076 were enrolled in engineering programs, and among graduate students 3,835 (of a total 6,970) were pursuing engineering degrees.¹⁷³

As of fall 2010 Georgia Tech employed a total of 6,120 faculty and staff. Over 79% of full-time teaching faculty were male, and the majority of total employees on campus were academic faculty (1,052) or research faculty/other professionals (3,880).¹⁷⁴

Tuition and fees for FY 2011 were \$8,716.00 for undergraduate Georgia residents (\$26,926.00 non-resident) and \$10,282.00 for graduate Georgia residents (\$27,850.00 non-resident).¹⁷⁵ The overall budget for Georgia Tech in fiscal year 2010 was over \$1 billion with revenues of \$1,158,535.00 and expenditures totaling \$1,093,918,357.00, most of which comprised research (\$461,892,472.00) and instruction (\$207,560,218.00).¹⁷⁶

¹⁷¹ Georgia Tech, "Fact Book 2010" available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_Factbook.pdf, 15. accessed 06 October 2011.

¹⁷² Ibid., 22.

¹⁷³ Ibid., 7.

¹⁷⁴ Georgia Tech, "Fact Book 2010" available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_Factbook.pdf, 6. accessed 06 October 2011.

¹⁷⁵ Ibid., 10.

¹⁷⁶ Ibid., 10. Specific breakdown of which included State Appropriations (\$207,583,762.00), Student Tuition and Fees (\$177,483,251.00), Gifts, Grants, and Contracts (\$597,120,890.00), & Sales, Services, & Other (\$176,347,648.00).

Georgia Tech Culture

In my interviews with Russ, Rick, and Erroll each of them described their interpretations of Georgia Tech's culture. According to Russ Cappello, who served as Director of Employment and Employee Relations for Georgia Tech OHR during the mid-1990s up to 2004,

I think it's probably a typical university. It's kind of laid back.... One of the reasons why they hired me was because I worked with ITT and they wanted, this was at GTRI, wanted to be successful like civilian companies, I'll say, very commercial companies.... Universities are very different. My environments are the army, 20 years in the army, and then ITT, a very commercial company, and then the university. And all three of those are totally different environments, the university being probably one of the hardest to navigate.¹⁷⁷

According to Rick Clark, current Georgia Tech Director of Admissions, the culture at Georgia Tech, I would say it does have a bit of corporate-mindedness. It's a fairly innovative place. I think that it's a place that challenges people not really that satisfied with the status quo. So for a student I think that means that they're surrounded by professors and staff and other students who are going to contest what they believe and want to sharpen them. And I think for those of us who are employed by Georgia Tech, we are also surrounded by bright and motivated people, which is encouraging everyone to look to be better. So it's a forward thinking culture, I think, and a place that kind of recognizes how pivotal we really are. It sounds a bit hyperbolic but truly improving the human condition in our world and that is part of our mission.¹⁷⁸

¹⁷⁷ Russ Cappello, interview by author, digital audio recording, Atlanta, GA., 13 October 2011.

¹⁷⁸ Rick Clark, interview by author, digital audio recording, Atlanta, GA., 27 October 2011.

While Erroll Davis did not work specifically at Georgia Tech he describes his impression of the individual Institute from his perspective as former Chancellor of the entire University System of Georgia,

it was one the 35 degree-granting institutions that reported to my office. I always viewed it as one of the more capable or most capable institutions in the system. And again, it was, of course, populated by very bright people.... and certainly has a very strong alumni body and a very giving foundation body.¹⁷⁹

Georgia Tech's Organizational Structure

According to Russ, Georgia Tech's organizational structure is as follows, "you have a hierarchy starting with the president who, being the most powerful, then the provost sits at the right hand. And then the deans and directors; very few people get in their way."¹⁸⁰ Rick Clark describes Georgia Tech's organizational structure a little differently in that

we are one of 35 system members of the USG so we're governed by a Board of Regents. We're a publicly-funded, less so than we used to be, institution here in the state. We operate technically as a nonprofit, but obviously Georgia Tech has a lot of affiliations that make us a pretty big contributor to the economy of the city and the state. But our primary function is to educate.... that extrapolates out not only to students but to corporations and partners as well.¹⁸¹

According to Dr. Jean Fuller, former Georgia Tech Office of Human Resources Director of Employment after Russ Cappello, Georgia Tech's structure is different than private sector organizations because

¹⁷⁹ Erroll Davis, interview by author, digital audio recording, Atlanta, GA., 01 December 2011.

¹⁸⁰ Russ Cappello, interview by author, 13 October 2011.

¹⁸¹ Rick Clark, interview by author, 27 October 2011.

within higher education institutions the major units are academic, well let's put it this way let's say Georgia Tech, the major units are the academic side, research, and then the business side.... The business unit of the system is responsible for the daily financial operations of the campus in general; both academics and research are audited by the business offices of the Institute who in turn are responsible for reporting annually to the Board of Regents, so they do have some checks and balances there.¹⁸²

My interview with Erroll mainly focused on discussing his role as the previous chancellor of the University System of Georgia and he described the Board of Regents (which oversees Georgia Tech) as

composed of 18 members, all of whom are appointed by the governor for seven-year terms. There is one representative for each of Georgia's 13 congressional districts, then there are five at large. The board will get larger next year when Georgia gets its new congressional seat and also some of the regents may have overlapping districts and so they may have to sort themselves out.¹⁸³

Georgia Tech's executive leadership, also known as the president's cabinet, is made up of 29 individuals all holding positions as deans, vice presidents, and/or executive vice presidents in various academic, research, service, or administrative campus units.¹⁸⁴ The two main arms supporting Georgia Tech's mission and employing the most faculty and staff are the Georgia Tech Research Institute (GTRI) and the six major colleges forming the campus' academic units. Various disciplines are represented in these colleges including architecture, computing, engineering, management, sciences, and liberal arts.

¹⁸² Dr. Jean Fuller, interview by author, digital audio recording, Atlanta, GA., 28 September 2011.

¹⁸³ Erroll Davis, interview by author, 01 December 2011.

¹⁸⁴ For a full review of all Georgia Tech leadership organizational charts see "Fact Book 2010" available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_Factbook.pdf, 28-37. accessed 06 October 2011.

At the top of Georgia Tech's current leadership stands George P. "Bud" Peterson, the current (and 11th) president of Georgia Tech (appointed in April, 2009). Before coming to Georgia Tech, Dr. Peterson held several academic and/or research leadership positions, including Chancellor of the University of Colorado, Boulder (2006-2009); Provost at Rensselaer Polytechnic Institute in Troy, New York (2000-2006); and Program Director at the National Science Foundation for Thermal Transport and Thermal Processing. Dr. Peterson's academic background was mainly in science and engineering which is in alignment with the programs offered at Georgia Tech.¹⁸⁵

Outside Relationships & Financial/Contractual Influences

The constitutive dimension of organizational policy includes considering the "theories of the networks, elites, masses, interest groups, ethnic/gender groups, providers and 'end users,' and beneficiaries who influence, participate in, and benefit from the policymaking process."¹⁸⁶ Georgia Tech has strong professional and financial relationships with several federal, state, and private organizations that have a vested interest in Georgia Tech's research efforts.¹⁸⁷ As the 2010 Georgia Tech fact book states:

Georgia Tech is a major center for advanced technology in Georgia and the southeast. With 2,600 academic and research faculty, 13,750 undergraduate students, and 6,970 graduate students, the Institute conducts research of national significance, provides research services and facilities to faculty, students, industry, and government agencies, and supports the economic and technological growth of the

¹⁸⁵ Ibid., 27. For full background information and a biography of Dr. Peterson see Georgia Tech online resource at: <http://www.gatech.edu/president/about/biography.html>, accessed 02 October 2011.

¹⁸⁶ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 43-44.

¹⁸⁷ See Eugene Bardach, *A Practical Guide for Policy Analysis*, 112. An important feature in policy analysis and "telling the story" is "establishing key features of the political environment."

state. Research operations are carried out through schools, centers, and laboratories. Last year, Georgia Tech reported research activity totaling \$562 million, placing the institution 28th among universities for research and development (or 6th among institutions without medical schools). Most of the research is supported by contracts with government organizations and private industry. The Georgia Tech Research Corporation, a non-profit organization incorporated under the laws of the state of Georgia, serves as the contracting agency. It also licenses intellectual property created at Georgia Tech, including patents, software, trade secrets, and other similar properties.¹⁸⁸

These relationships can and often do have a strong influence on Georgia Tech policy decisions. For example, and specifically relating to background check policy, it is in Georgia Tech's best interests to portray the reputation of an organization that values strong risk management. As Jean describes,

Georgia Tech is governed by policies and procedures from the Board of Regents. Tech receives millions of dollars from the federal government through its research efforts and must therefore practice federal guidelines in reference to hiring practices as well as ADA compliance.... Now the background checks assist employers in not making hiring choices that could be detrimental to their bottom line and put the company or organization at risk legally. Weeding out undesirable applicants also possibly protects the quality and interests of organizational relationships and existing employees; however, nothing is 100% sure.¹⁸⁹

¹⁸⁸ Georgia Tech, "Fact Book 2010" available at: http://www.irp.gatech.edu/sites/www.irp.gatech.edu/files/2010_Factbook.pdf, 130. accessed 06 October 2011. In the 2010 Georgia Tech report of research awards by agency, the majority (70.4%) were federal contracts, \$392,009,321.00. Agencies awarding grants and contracts to Georgia Tech varied, with the U.S. Air force (\$93,720,959.00 or 16.8% of total awards), the National Science Foundation (\$83,952,428.00 or 15% of total awards), and private industrial organizations (\$75,590,841.00 or 13.6% of total awards) contributing the highest amounts. Other agencies included, but are not limited to, the U.S. Dept. of Defense (8.2%), U.S. Army (7.6%), U.S. Dept. of Health & Human Services (5.6%), and the U.S. Dept. of Energy (2.3%).

¹⁸⁹ Dr. Jean Fuller, interview by author, 28 September 2011.

Policy 8.1 Inception & Early Influences

The majority of my data collection and analysis in this chapter aligns with Cooper, Fusarelli, and Randall's technical dimension of organizational policy which consists of understanding the "planning, practice, implementation, and evaluation" or what Cooper, Fusarelli, and Randall refer to as "the nuts and bolts of policymaking."¹⁹⁰ The technical dimension formed the main crux of my research and Jean perhaps describes this best in her statement "okay, I would share the history of Georgia Tech's implementation of background check policy and believe me it would take hours if you really wanted to listen."¹⁹¹ Using responses from my interviewees I was able to create an account of events and experiences that had an early influence on Policy 8.1 before it became a formal written document. Jean recalls this time period and when I informed her that I would be interviewing Russ she stated "so I think what Russ is probably going to say is 'we hired some shady characters back then....'"¹⁹² Following my account of the early influences of Policy 8.1 I also provide a recreation of Policy 8.1 as a formal written document. I accomplished this through following all the revisions and changes the Policy experienced throughout all four of its releases (June 2005, October 2007, November 2009, & May 2010).

Policy 8.1 Before June 2005

June 1st, 2005 is an important date for understanding Policy 8.1 because that is when the policy was formally adopted as a written publication in Georgia Tech's human resources policy manual. Before the creation of the written policy, there were earlier influences and

¹⁹⁰ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 43-44.

¹⁹¹ Dr. Jean Fuller, interview by author, 28 September 2011.

¹⁹² Dr. Jean Fuller, interview by author, 28 September 2011.

events that contributed to its inception including the 1996 Olympics and an informal practice of conducting background checks on temporary staff, both of which I discuss below.

Russ recalls many of these early influences during the mid-1990s up to 2004. For example, the federal government utilized background checks on all Georgia Tech employees when Georgia Tech hosted the 1996 summer Olympics. “During the 1996 Olympics when background checks were done on everybody on campus, there were certain people that were not allowed into certain areas because of their background [records of criminal convictions].” Used as a precautionary measure these background checks were intended to protect the athletes and dignitaries. “You know, the President [of the United States] came and there was so much security.” Russ was granted access to all areas of the campus during the Olympic event however; his position as Employment Director made him responsible for the employees who were restricted because of results of their background checks. Russ explains how temporary off-campus work areas were designated for these employees who were restricted. “I would go to one of the high schools off-campus to be there in the event that one of these people who were not allowed on campus could come and talk to me if they had a need.”¹⁹³ The criminal history results were available only to the federal security who conducted the background checks and this created an air of mistrust toward those who were not allowed on campus.

And so it was kind of interesting that we couldn’t find out, because then supervisors and managers always looked at those people who couldn’t get on the campus with suspicion because now you had somebody here that you didn’t know what they did, and so there was a concern.... In fact, one supervisor found out something on somebody, but we couldn’t use it, because he got it through subterfuge.... And it

¹⁹³ Russ Cappello, interview by author, 13 October 2011.

wasn't bad, what he did. It wasn't like he killed somebody or something. But nevertheless, he was a convicted felon. But we couldn't take action against him because of the grounds on which it was obtained.¹⁹⁴

Russ, a few years after the 1996 Olympics, began conducting pre-employment background checks on temporary staff hires. "I was Director of Employment and Employee Relations which included [oversight of] the temporary employees and I started the background checks on temporary employees."¹⁹⁵ This decision was in response to a specific incident which fueled Russ' growing concerns about how temporary hiring was being handled at the time.

It was probably about the year 2000 or whatever.... It started out slow and it took a lot of work.... Because it was very lax, you came in, you filled out an application, and they put you on the job. I was asking them for a long time to start background investigations, but what really brought it to a head was a gentleman that was in housing as a custodian, which means he had access to dorms.... I got a call from one of the team leaders saying that the parole officer had called her wanting to know if in fact the person worked there. She called me and said, "Can I give him the information?" And I said, "Whoa, hold on. If this man is on parole, that means he did time." If he did time, he was convicted of a felony and that's against Board of Regent's policy. Pull his application and let's see what he said. Well that answer was negative. You know, "Were you ever convicted of a felony?" "No." The legal department checked his background and found that he did time for assault with a deadly weapon, kidnapping, and transporting a minor across state lines.¹⁹⁶

After Russ convinced the Georgia Tech senior leadership to conduct background checks on temporary hires, he also exerted efforts to encourage background checks on

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

regular full-time staff and faculty as well. “But then I kept pushing for regular employees and indeed for faculty.” Russ recalled a faculty recruitment circumstance that put him in a difficult political tangle with an academic department. According to Russ a potential faculty hire mentioned that he had a felony record. “One of the academic departments found out by accident that this gentleman had been convicted.... he shared with the director that he had been convicted of child molestation.” However, the response from the hiring manager was that “it was a vindictive wife who brought those charges against him during a divorce.” With this knowledge out in the open, Russ’ rebuttal was “well, you can’t hire him.... there is no waiver process within the Board of Regents, and so you have to let him go [as a potential candidate]. Well, I got all kinds of hell on that.”¹⁹⁷

Below Russ describes another incident in which he prevented the hire of a research faculty applicant with the Georgia Tech Research Institute who was convicted of homicide.

And so I got a call from this laboratory. This guy was research faculty too. And they called me and said, “This guy is in South Carolina. Can he work from home?” And I said, “I don’t think so, because he might be working on classified material that can’t go to South Carolina. Why can’t he come here and work?” And the answer was, “Well, he’s not allowed in the state of Georgia as part of his parole.” And I said, “If the man is on parole, why did you hire him?” And they said, “well, they didn’t know he was on parole until the parole officer called him and told him, told the lab”.... He got his Master’s degree while he was in prison. His résumé said that he was a systems analyst for the prison system. He never mentioned that he was an inmate. He just had it down. And on that section where it asks “have you ever been convicted of a felony?” he never answered straight out. What he said was anything that happened in the past, he had paid for, and he kind of smoothed over it.... And so he was put on payroll, but he never started work, because he was not allowed in the state of Georgia.... What he was convicted of was driving under the influence

¹⁹⁷ Ibid.

and vehicular homicide.... But the thought was that faculty doesn't do bad things. It's only classified employees that do bad things. And so, I was never able to get anybody to even listen, to doing faculty background checks.¹⁹⁸

During his time at Georgia Tech, although he tried, Russ was not able to convince his superiors to implement a formal campus-wide background check policy that included screenings for full-time faculty and staff. In the absence of a formal background check policy Russ utilized other methods of identifying potential convicted felons "because that's the only way I could do it." As a standard document for any new hire within the university system the BOR security questionnaire, at the time, asked specifically, "have you ever been convicted of a felony" with check boxes for "yes" or "no." Russ instructed his staff to alert him of any new hire "who had anything other than a clear no. If there was any other verbiage on that form, then I took a look at it, called that person and I interviewed them personally."¹⁹⁹

Russ Retires and Jean Takes Over

When I was hired in the Georgia Tech Office of Human Resources in 2001, I worked for Russ Cappello until his retirement. After Russ Cappello retired in early 2004 as Director of Employment and Employee Relations, his responsibilities as Employment Director were inherited by his colleague, Dr. Jean Fuller, who had an extensive involvement with the overall Georgia Tech HR policies. "I'm retired director in the Office of Human Resources with over 22 years of experience.... I actually developed the policies and

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

procedures manual. We didn't have one prior to my doing it."²⁰⁰ Dr. Fuller was my supervisor for the last two years of her career at Georgia Tech (2004-2005) when she was the Director of Employment, Policies, and Staff Support Services. At the time I was manager of the temporary employment division of Georgia Tech's Office of Human Resources.

As described earlier, Russ made it a practice to conduct background checks on temporary staff hires in the absence of a formal policy. During this time, the Georgia Tech police department provided OHR with these Georgia criminal histories searches as a courtesy and at no cost. I recall that toward the end of 2004 the police chief informed Dr. Fuller that they could no longer provide criminal history searches due to the increased volume of temporary hiring. Dr. Fuller saw this as an opportunity to bring change to OHR, as she, like Russ, believed that background checks should be conducted on all newly hired employees. Her efforts to convince the Georgia Tech senior administration to adopt a formal background check policy were successful.

Policy 8.1 June 2005 Version

In June 2005 Georgia Tech, under the direction of Jean Fuller and myself (reporting to Jean as the new background check program manager) formalized campus-wide background check policy through its first written version named, at the time, "8.1 Employment Background Checks."²⁰¹ Creating this new policy was a challenge for Jean and I, because very few higher education institutions had a formal policy. Jean describes her recollection,

²⁰⁰ Dr. Jean Fuller, interview by author, 28 September 2011.

²⁰¹ Dr. Fuller appointed me in this role mainly because whenever there was a question about a criminal history report the information was brought to me (due to my previous experience working as a police officer for two years in Michigan).

you know it's been awhile. It's been gosh about eight or nine years, but I was trying to remember, I am thinking that we had problems finding other programs within the university system. We were probably one of the first to implement a full-blown program.²⁰²

This first written version of Policy 8.1 was comprised of three major headings including “Purpose,” “Procedure,” and “Positions Requiring Background Checks.”²⁰³

(1) The “Purpose” heading consisted of two paragraphs articulating, “Background checks will be conducted on applicants and current employees being considered for promotion, reclassification, or transfer” and that these background checks “must be completed prior to any offer of employment.” The Purpose Statement also communicated that Georgia Tech would be contracting the sensitive data collection and reporting process to a third-party vendor referred to as “The Background Check Agency.”²⁰⁴

(2) The “Procedure” heading consisted of six sub-headings including (I) Types of Background Checks; (II) Position Advertisements and Offers of Employment; (III) Approval to Conduct Background Checks; (IV) Results of Background Checks; (V) Adverse Action; and (VI) Records Retention.

I. “Types of Background Checks” specified that The Office of Human Resources was responsible for maintaining a list of Georgia Tech employment positions requiring background checks. These were “positions that have access to grand master keys, money, security-sensitive areas, and confidential information; positions that have the capability to

²⁰² Dr. Jean Fuller, interview by author, 28 September 2011.

²⁰³ Georgia Tech Policy 8.1, document in author’s possession and available upon request, all subsequent quotations under heading “Policy 8.1 June 2005 Version” refer to this document unless otherwise noted.

²⁰⁴ At this time I conducted all the research and provided reports to Dr. Fuller on an appropriate third-party company to collect and report all of our background check information. We selected InfoMart Inc. of Atlanta.

create, delete, or alter Institute records; and any position which is considered a position of trust.”

II. “Position Advertisements and Offers of Employment” stated that applicants were to be made aware of the requirement for a background check “at the earliest possible stage in the hiring process.” If a position required a background check, it was to be communicated to all applicants in the position advertisement and no offer of employment could be extended until successful passing of the background check.

III. “Approval to Conduct Background Checks” explained that campus hiring departments must specifically request a background check using the designated approval forms and the “total cost of each background check will be charged to the hiring department.” Responsibility for initiation of and payment for background checks rested on the hiring department; however, the Office of Human Resources ensured that employment applicants provided appropriate consent for a background check as required by the Fair Credit Reporting Act (FCRA). Finally, sub-heading III stated, “If a candidate/employee refuses to sign the Disclosure and Consent Form, no further consideration will be given to that candidate/employee.”

IV. “Results of Background Check” outlined the procedure for administering decisions regarding background check results in a manner conducive with ensuring “the decision is fair and legal based on all information.” At this time the USG did not have a policy specifically devoted to background checks; however, the USG Business Procedures Manual, at the time, did state that convicted felons were not permitted to work for the university system. This first version of Policy 8.1 aligned with the USG Manual stating that “a record of a felony conviction will result in immediate disqualification for and/or termination of employment.” Falsification of application documents was also a

circumstance that warranted immediate disqualification for and/or termination of employment. Records that contained convictions of non-felony offenses were reviewed by the Human Resources Manager of the Background Check Procedure.²⁰⁵ The decision process at this time for non-felony convictions was governed by the tenet that “records that include information which may indicate a risk to Georgia Tech students, employees, and/or property will result in disqualification for and/or termination of employment.”²⁰⁶

V. “Adverse Action” described the procedure for communicating a disqualification of employment. This responsibility resided with the Background Check Agency and included use of formal letters that included “rationale for the decision as well as contact information for the Background Check Agency.” The Background Check Agency assisted any applicants with any requests “pertaining to the record in compliance with the FCRA.” If an applicant was a current employee “and the background check reveals adverse information which constitutes grounds for termination, the Office of Human Resources will initiate the appropriate termination procedure.”²⁰⁷ This resulted in several employment terminations after the policy was initiated, as Jean recalls,

and one of the things that you know we found out, and it was unfortunate, were internal employees applying for promotion. We didn’t have background checks you know, say five or six years prior to when they were first hired, but when they applied for a promotion or were selected as a candidate, we had background checks in place.... I have actually had to have a department fire an employee because they lied

²⁰⁵ At the time this was my responsibility when I worked in the Georgia Tech Office of Human Resources.

²⁰⁶ This resulted in many meetings with OHR senior management in order to discuss criminal records and the implications associated with hiring individuals with non-felony convictions.

²⁰⁷ I recall specifically that the first 18 months of the new policy produced a lot of tension for applicants already employed on campus who had criminal histories. Policy 8.1 not only served as a preventative method for screening outside applicants, but also as a tool for identifying current employees with criminal histories (that were not revealed before Policy 8.1).

on their application which was unfortunate and they had been an excellent employee while they were at Georgia Tech.²⁰⁸

VI. “Records Retention” stated that the Office of Human Resources was responsible for serving “as the custodian of records for background check results.”

(3) The final July, 2005 heading of Policy 8.1 was “Positions Requiring Background Checks.” This heading consisted of four subheadings.

I. “Any position (at any level) which is considered a ‘position of trust.’” Position of trust is further defined as any job assignment “that requires the discretionary managing of money, sensitive material/equipment, or children.”

II. “All senior and executive level management positions (including Asst. and Assoc. levels).” Examples provided for positions of this kind were Deans, Vice Presidents, and Directors.

III. “Any position (at any level) which has access to Institute financial and/or sensitive information records/databases.” After this subheading was a list of seventy eight positions that were determined to fit in this category. Examples included Accountant, Financial Manager, and Human Resources Manager.

IV. “All safety sensitive positions (at any level).” These include “positions requiring routine high risk work where there is potential for significant risk to others.” After this subheading was a list of 12 positions that were determined to fit in the routine high risk category (most of which were either in the police department or security related). Also, “positions charged with direct medical care, treatment, and/or counseling of students and/or access to controlled substances.” The complete list of medical related positions was a total of twenty two jobs including Chief Medical Technologist, Nurse, Staff Physician, and

²⁰⁸ Dr. Jean Fuller, interview by author, 28 September 2011.

Pharmacist. Finally, “any position requiring possession/use of campus keys, the operation of heavy machinery, dangerous equipment, and/or use of a state owned vehicle.” Eighty four positions were determined to fit within this category, including Custodial Manager, Locksmith Foreman, and Maintenance Construction Worker.

Policy 8.1 June, 2005 Evolution Highlights

The inception version of Policy 8.1 in June, 2005 was a turning point in the campus employment recruitment culture. After June, 2005 the Office of Human Resources could refer to a specific policy for background check administration. The campus gradually accepted the increased liability associated with obtaining very sensitive background check data and the additional costs associated with using a third-party vendor. The fact that no employment offer could be extended until completion of a background check added an additional level of bureaucracy to the hiring process. The creation of Policy 8.1 also increased Georgia Tech’s attention to the associated (no exceptions at the time) USG employment policy that did not allow the hiring of any applicant with a felony conviction.

Policy 8.1 October 2007 Version

The first revision of Policy 8.1 was released in October, 2007. This revision was conducted by me with assistance from other campus human resource professionals and representatives from the Georgia Tech office of legal affairs. Revisions to Policy 8.1 in October, 2007 included:

- (1) Title was changed to “8.1 Pre-Employment Screening.”²⁰⁹

²⁰⁹ Georgia Tech Policy 8.1, document in author’s possession and available upon request, all subsequent quotations under heading “Policy 8.1 October 2007 Version” refer to this document unless otherwise noted.

(2) “Purpose” heading from July, 2005 version was changed to “Policy Overview” stating “policy ensures that individuals meet certain conditions of employment as required by the Institute.”

(3) “Definitions” heading was added with a list of five terms defined as important for understanding Policy 8.1. These terms included “Screening Agency,” “Coordinator of Pre-Employment Screening Procedure,” “External Applicant,” Internal Applicant,” and “Screening Report or Report.”

(4) “Individuals Affected by This Policy” heading was added stating, “Applicants selected for employment or promotion into a position requiring pre-employment screening.”

(5) “Policy Statement” heading was added, “Policy is designed to ensure compliance with applicable laws, regulations, and policies.” More specifically laws, regulations, and policies enforced by the Fair Credit Reporting Act, the Equal Employment Opportunity Commission, the State of Georgia, and the Board of Regents of the USG.

(6) “Procedures” heading was revised with “Applicants Requiring Background Checks.”

The June, 2005 version required background checks for all selected temporary employment applicants and applicants selected for regular classified “positions of trust.” The October, 2007 version no longer listed specific campus positions of trust and required pre-employment screening for “all external applicants selected for classified, research, and faculty positions” as well as all “external” selected applicants for temporary employment positions. The October, 2007 version also specified that pre-employment screening was required for “selected internal classified applicants not screened within the previous 12 months.”

(7) “Procedures” heading was revised with “Notification of Results for Pre-Employment Screening,” articulating the appropriate “formal chain of custody for screening reports.”

(8) “Procedures” heading was revised with specific “Types of Screening” to include definitions for checking and/or verifying criminal history, education credentials, driving history, substance abuse, and “supplementary job-related screenings.” Supplementary screenings provided an option for additional screenings granted the screening was “supported by a job-related rationale.”²¹⁰

(9) “Procedures,” section III “Approval to Conduct Background Checks” of the July, 2005 version was divided into two separate sections of the October, 2007 version. Section V, “Request to Conduct Pre-Employment Screening,” was added, articulating that the appropriate background check request form must be used by the hiring department indicating intention to pay invoice charged by “The Screening Agency.” Section VI, “Applicant Consent to Conduct Background Checks” was added requiring use of “an appropriate Disclosure and Consent Form required by the Fair Credit Reporting Act.”

(10) “Procedures” heading was revised with “Petition for Waiver of Pre-Employment Screening” added stating that hiring departments have the option to request a waiver of screening. Potential circumstances warranting a waiver “include, but are not limited to, a foreign national applicant’s first time entry into the United States with no record of being issued a U.S. social security number” as well as “demonstration of a recent passing screening conducted by an appropriate authority other than Georgia Tech’s Screening Agency.” The rationale for this change was due to recognition that many new research faculty hired in the Georgia Tech Research Institute (GTRI) had a current U.S. government security clearance which is a very comprehensive background check process. GTRI petitioned the Office of

²¹⁰ For example, a credit history check for positions with a fiduciary duty and/or access to Institute funds would be considered a “supplementary job-related screening.”

Human Resources for this change as it was deemed unnecessary to pay additional dollars for a second less comprehensive background check.

(11) “Procedures” heading was revised with “Adverse Action” changed to include additional verbiage stating that “employment eligibility decisions regarding results of pre-employment screening will be made consistent with Board of Regents Policy.” The October, 2007 version states that “The Associate Vice President for Human Resources, or his designee, evaluates the relevance of criminal and motor vehicle reports in relation to the duties of the job vacancy.” This change provided for more discretionary latitude pertaining to relation of offense and job responsibilities. For example, a common conviction found after the inception of Policy 8.1 in July, 2005 was driving under the influence. If an applicant had only one of these convictions and was applying for a position unrelated to motor vehicle operation, such as a finance position, often he or she would be considered eligible for hire. However, if the same applicant were applying for a campus bus driving job, he/she would normally be disqualified because of the higher level of risk associated with a position in which state motor vehicle operation is a primary job responsibility.

Increased discretionary latitude regarding felonies was communicated to the USG institutions in September, 2007 in a letter from Rob Watts to all USG Presidents and Chief Business Officers. The letter references the “absolute prohibition” against an institution’s hiring someone with a felony conviction and states that “Chancellor Davis is reviewing the USG Business Procedures Manual and has indicated that he intends to remove this absolute prohibition, except with respect to positions of trust, which is consistent with state law.” Further, the letter communicates the rationale behind the change in that “the Chancellor

feels strongly that presidents should be in a position of making appropriate risk assessments for other positions.”²¹¹

(12) “Forms” heading was added with web-based active links to “GT Pre-Employment Screening Request Form” and “Background Investigation Applicant Consent Form” PDF documents.

(13) “Contacts” heading was added providing contact information for four Office of Human Resources staff members who consistently worked with Policy 8.1.

Policy 8.1 October, 2007 Evolution Highlights

This first revision of Policy 8.1 was a direct response to the summer 2007 USG directive that all USG institutions adopt a background check policy that included faculty pre-employment screening. In a formal January 18th, 2007 letter from Dr. Hugh Hudson (Executive Secretary of the AAUP, Georgia Chapter) to USG Chancellor Dr. Erroll Davis, Dr. Hudson expressed concerns regarding the 2007 USG mandate for a system-wide pre-employment background check policy. Dr. Hudson did not respond to my requests to interview him for this study; however, in his letter to Dr. Davis he noted that he had been contacted by many faculty and administrators “with deep concerns regarding the potential for abuse in the recently announced policy of requiring a police background investigation for all new faculty hires.” Dr. Hudson’s letter specifically referenced the AAUP’s Committee on Academic Freedom and Tenure 2004 statement “Verification of Trust” regarding background checks in higher education. He noted that the statement called for “a renewed sense of proportion,” and “with due respect for the rights of privacy of all Americans” the

²¹¹ Rob Watts to USG Presidents& USG Chief Business Officers, 11 September 2007.

report urged that the practice of conducting background checks “be limited to candidates for positions with significant security considerations.” The letter continues by stating

a general policy of searching the criminal records, if any, of an applicant – was rightly held to be egregiously disproportionate to reasonable institutional needs.... The Committee noted that criminal records are notoriously imprecise as to criminal guilt, containing as they do information that ranges from arrest through dismissal of sentencing, and do not contain important contextual information.... A matter of equal concern is the lack of any suggested procedural safeguards. The AAUP recommended that at the least universities follow the model of the federal Fair Credit Reporting Act that governs the procedures that employers must use when they retain businesses to conduct background checks: informing the candidate of the proposed background check and obtaining authorization in writing; providing the candidate with a copy of the final report; and refraining from any adverse action on the basis of the report unless and until the prospective employee has had an opportunity to contest or clarify its accuracy.... I trust further that you share a desire to protect people’s privacy to the extent possible. I would appreciate your thoughts on this matter as the Georgia Conference of the AAUP would like very much to work in harmony with you on this issue.²¹²

In my interview with Dr. Erroll Davis, he described the rationale for his decision to implement background check policy throughout the USG “from a risk management perspective.” He stated

I moved forward and required background checks of all employees in the system, because I felt that again, if I were in a lawsuit, all the plaintiff’s council had to do was say, “Didn’t you have the opportunity to check the background of your employee and you didn’t? So you were, therefore, negligent.” And so I think you have to do it from a risk management perspective.²¹³

²¹² Dr. Hugh Hudson to Dr. Erroll Davis, 18 January 2007.

²¹³ Erroll Davis, interview by author, 01 December 2011.

Also in my interview with Dr. Davis he talked about how the University of Georgia experienced an incident similar to incidents that were described in my interview with Russ.

I should point out that the University of Georgia steadfastly was against background checks until they had an incident involving a professor. I don't know whether he assaulted a young female or was in an illicit relationship or whatever, but it turned out that he had a criminal conviction or some indications of this behavior in his background which would have been surfaced by a background check. It was pretty high-profile when it came out, and I made the point, "Well, if you had the background checks, the guy wouldn't be on campus," and I haven't heard a peep since.²¹⁴

Summary of October, 2007 Policy Revisions

This first revision of Policy 8.1 completely changed the approach regarding which positions required background checks. All employment offers, including faculty, now required at least a state and federal criminal history search spanning at least 7 years, a nationwide sex offender search, a social security verification, Office of Foreign Asset Control (OFAC) check, and education verification for any position requiring a higher education degree. Any additional screenings had to be supported by a job related rationale. For example, positions requiring operation of state owned vehicle required a driving history check. This expansion of positions requiring background checks was accompanied by additional flexibility in making hiring decisions to applicants with felony convictions. Finally, the addition of an option to petition for a waiver of a background check also added additional flexibility and reduced costs in recognition of potential redundancy.

²¹⁴ Ibid.

Policy 8.1 November 2009 Version

The second revision of Policy 8.1 was released in November, 2009. By this time I no longer worked in the Georgia Tech Office of Human Resources. This revision was the most extensive overall change (in format, content, and level of detail) of all three revisions. It increasingly mirrored the changing system-wide USG policy. As the USG policy evolved and changed, Policy 8.1 also changed in order to ensure alignment with the parent USG policy. Revisions to Policy 8.1 in November, 2009 included:

- (1) Title was changed to “8.1 Background Investigation Policy.”²¹⁵
- (2) “Policy Statement” heading was moved to the beginning, and statement verbiage was shortened to, “It shall be a condition of employment with any Institute of the University System of Georgia to submit to a background investigation.”
- (3) “Reason for Policy” heading was added, stating that the intention of the policy is to establish guidelines “for evaluating an applicant’s past record” as part of the hiring decision process.
- (4) “Entities Affected by This Policy” heading was added, stating that Policy 8.1 “applies to all units and employees within the Georgia Institute of Technology.”
- (5) “Who Should Read This Policy” heading was added stating, “Each member of the Georgia Institute of Technology should be aware of this policy.”
- (6) “Contacts” heading was changed so it no longer listed specific staff in OHR, but instead provided general contact number and email for “OHR, Talent Acquisition.”
- (7) “Website Address for This Policy” was added.

²¹⁵ Georgia Tech Policy 8.1, document in author’s possession and available upon request, all subsequent quotations under heading “Policy 8.1 November, 2009 Version” refer to this document unless otherwise noted.

(8) “Definitions” heading was revised to include definitions for “Board of Regents,” “Background Investigation,” “Background Investigation Committee (BIC),” “Consent Form,” “Consumer/Credit Reporting Agency (CRA),” “Hiring Department,” “Talent Acquisition,” “Position of Trust,” and “Moral Turpitude.”

(9) “Policy Overview” heading from previous version was changed to “Overview.”²¹⁶ Overview highlights a significant change from previous version, in that “offers of employment for positions of trust may be conditional pending the result of a state and federal criminal history check.” The October, 2007 version prohibited any offer of employment until the completion of a background check.²¹⁷ “Overview” articulated that current employees are also subject to a background check for promotion applications in alignment with the previous two versions. Temporary staff hired as employees on Georgia Tech’s payroll are also included as individuals who are subject to a background investigation (in alignment with the previous two versions). In addition, newly added wording for the November, 2009 version stated that “temporary employees hired through Georgia Tech’s approved temporary agencies and assigned in Georgia Tech’s departments must also submit to a background investigation.”²¹⁸ Also added was specific reference to international applicants: “if the candidate is living in the U.S. at the time of the employment process or has been in the U.S. for more than thirty (30) days within the last seven (7) years, a U.S. background investigation will be performed.”

²¹⁶ “Overview” heading absorbed some of the content from “Procedures” of the previous version, including information pertaining to the minimum screenings involved which included a state and federal criminal history search spanning at least 7 years; a nationwide sex offender search; a social security verification; Office of Foreign Asset Control (OFAC) check; and education verification for any position requiring a higher education degree.

²¹⁷ A debate exists regarding the point at which offers of employment should be extended which I will discuss further in my reports of Scott Morris’ interview.

²¹⁸ Temporary staff of this type are not on Georgia Tech’s actual payroll as “employees” however, they are contracted through a staffing agency.

(10) “Procedures” heading from previous version was changed to “Process/Procedures.”

“Process/Procedures” comprises the majority of wording in the November, 2009 version,

and overall this section of the policy was expanded from the previous version. This

expansion does not deviate extensively from the previous version regarding content;

however, the level of specification regarding policy procedure is much more articulate.²¹⁹

Six of the nine sub-headings of “Procedures” in October, 2007 version were brief, one

paragraph statements containing one to four sentences. The November, 2009 version has

six sub-headings, all of which contain multiple paragraphs, subheadings, and/or bullet points

explaining in more detail the appropriate process for requesting, administering, and

interpreting results of background investigations.²²⁰

(11) “Responsibilities” heading was added, stating that the Associate Vice President for the

Office of Human Resources is responsible for “ensuring compliance with the policy” and

that “OHR Talent Acquisition” is responsible for offering “assistance with policy

interpretation.”

(12) “Appendices” heading was added with “None” listed for any applicable appendices.

Policy 8.1 November, 2009 Evolution Highlights

One of the major November, 2009 changes (still in effect in the current May, 2010

version) was the requirement of a Background Investigation Committee (BIC). The BIC

established a formal group of people assigned to work together in determining the suitability

²¹⁹ This expansion comprised much of the expansion of the entire policy from 2007 to 2009. The entire October, 2007 version consisted of 3.5 pages in length and the November, 2009 version was comprised of 7.5 total pages.

²²⁰ These subheadings included: 1.) Guidelines for Determining Eligibility for Applicants with History; 2.) Guidelines for Determining for Employment or Continued Employment When Verifying Credit History; 3.) Process for Conducting a Background Investigation; 4.) How Criminal Background Information is Processed; 5.) Credit Checks; & 6.) Maintenance of Background Investigation Reports.

of applicants with criminal histories that do not automatically disqualify candidacy as outlined in the policy. Jean saw this change as a step in the right direction stating “as I said before, I have reviewed Georgia Tech’s current background investigation policy. The policy has been evaluated and improved since 2005 to include an oversight committee; we didn’t have that back then.”²²¹

Adding clarification of moral turpitude also was a significant change in this version. Specifically stated in the November, 2009 version “In Georgia, the test for whether a [crime] is one involving moral turpitude is ‘does the [crime], disregarding its felony punishment, meet the test as being contrary to justice, honesty, modesty, good morals or man’s duty to man?’” This revision demonstrated a further understanding and clarification of criminal histories and how each should be considered in making employment eligibility decisions; however the detail in describing the term and crimes associated with moral turpitude seemed excessive. Accompanying the definition of moral turpitude are 10 specific examples of offenses involving moral turpitude including murder, voluntary manslaughter, sale of narcotics, and larceny or a misdemeanor theft by taking. Also, 13 specific examples of “offenses which are not crimes involving moral turpitude” are listed, including public drunkenness, driving under the influence, fighting, & carrying a concealed weapon.

Overall, this revision of Policy 8.1 was what I refer to as the “overboard version.” The creators, at the time, added so much detail that several of the 2009 additions were abandoned in the May, 2010 version, including most of the language pertaining to moral turpitude as well as the requirements for background checks on foreign applicants and staff hired through third-party staffing agencies. In my interviews with Jean and Russ both warned of the dangers of policies with either too much detail or lack of continued evaluation.

²²¹ Dr. Jean Fuller, interview by author, 28 Sept. 2011.

According to Russ, “sometimes when these policies are developed, people have a tendency to go overboard and that hurts the program. With all policies, I think there has to be a measure of common sense.”²²² And as Jean states,

Oh this one was important, also share things that did or did not work over a period of time after the implementation of the policy. And also to consistently review policy for improvements and it looks like that’s what has been done based on what I have read in the last couple days.... You have to evaluate your program, that’s what gives it validity.²²³

Policy 8.1 May 2010 Version

When I interviewed Dr. Jean Fuller in October 2011, five years after she retired, her response to all the changes of Policy 8.1 was “I went online to look at the current policy, which was almost foreign compared to the original policy that was developed.”²²⁴

The third revision of Policy 8.1, the current version, was released in May, 2010. This revision contains very few changes from its previous version in contrast to the November, 2009 version which had the most comprehensive changes in comparison to its predecessor. Most of the changes in this version were due to deletion or abbreviation of content. If I were to describe this version of Policy 8.1 in just a few words it would be “a step back to simplification.” It appears that the authors of this version recognized that the previous 2009 version was too long and detailed. Revisions to Policy 8.1 in May, 2010 include:

(1) “Website Address for This Policy”²²⁵ was removed.

²²² Ibid.

²²³ Ibid.

²²⁴ Dr. Jean Fuller, interview by author, 28 September 2011.

²²⁵ Georgia Tech Policy 8.1, document in author’s possession and available upon request, all subsequent quotations under heading “Policy 8.1 May 2010 Version” refer to this document unless

(2) Under heading “Definitions” the term “Background Investigation” was revised to state, “an investigation may be comprised of one or more of the following.” The definition continues by listing the details of each type of investigation, including criminal history search, academic/education credentials confirmation, credit history, driving history search, and substance abuse screening. The term “Moral Turpitude” was also changed (and significantly shortened) to “Georgia law defines crimes of moral turpitude.” The list of crimes that do and do not constitute a crime of moral turpitude, which was contained in the November, 2009 version, was removed.

(3) Under heading “Overview” both statements from the previous version pertaining to international candidates and temporary employees hired through staffing agencies were removed.

(4) “Petition for Waiver of a Background Investigation” was given its own major heading after “Overview” and before “Process/Procedures.”

(5) Under “Process/Procedures” additional verbiage was added for “Determining Eligibility” that specifies the criteria for criminal drug offenses. “The first conviction shall disqualify a person for not less than two (2) years” and “a second or subsequent criminal drug offense” shall disqualify any person “for a period of five (5) years from the most recent date of conviction.”

All other wording from the previous version remained the same except under “Responsibilities” the Office of Legal Affairs was added as also being responsible for “assistance with policy interpretation.”

Summary of Policy 8.1 Evolution and Early Influences

In summary, Policy 8.1 before it became a written policy was highly influenced by triggering events. First, when Georgia Tech hosted the Olympics in 1996 the federal government performed background checks on all Georgia Tech personnel which raised suspicions about the number of staff with criminal histories. Second, Russ Cappello provided examples of incidents where criminal histories were uncovered by accident adding additional risk management concerns within the Office of Human Resources. When the Georgia Tech police department refused to continue conducting criminal history searches on temporary staff hires this forced the campus to make a critical decision. Jean Fuller saw this as an opportunity to convince senior leadership to invest more in background checks as a risk management strategy.

When Policy 8.1 was formalized in June, 2005 this marked the first time Georgia Tech contracted with an outside vendor to conduct background checks increasing both the liability and costs associated with pre-employment screening. In June, 2005 Policy 8.1 also placed much more stringent rules surrounding specific positions required a background check, which applicants were eligible for hire, and when an employment offer could be extended. In October, 2007 Policy 8.1 was revised for the first time in response to the USG initiative requiring all USG institutions to adopt a background check policy. This revision changed the previous approach in that all employment offers, including faculty, required the minimum level background check with the option for additional screenings as long as the additional checks were supported by a job related rationale. Also, added was an option to petition for a background check waiver as well as additional flexibility in making hiring decisions to applicants with felony convictions. In November, 2009 Policy 8.1 was revised extensively adding an overabundant amount of wording and procedural specifics, including

an elaborate discussion surrounding moral turpitude. This version required background checks for international applicants and hires through third-party employment agencies. Conditional employment offers before completion of a background check were allowed in this version and the concept of using a Background Investigation Committee (BIC) was introduced. In May, 2010 (the current version) Policy 8.1 was scaled back removing the background check requirement for international applicants and hires through third-party employment agencies. Almost all the wording surrounding moral turpitude was removed and replaced with “Georgia law defines crimes of moral turpitude.” Finally, this version provided more specifics pertaining to eligibility for employment for applicants with drug related convictions and the Georgia Tech Office of Legal Affairs was added as responsible for assistance with policy interpretation.

CHAPTER 7

SUMMARY & FINAL REMARKS

Harry Wolcott offers the following advice when asking the question, “How do you conclude a qualitative study?” Wolcott’s response is, “You don’t.” He goes on to say that qualitative researchers should consider moving away from the common conception “that your final chapter must lead to a conclusion or that the account must build toward a dramatic climax.”²²⁶ Harry Wolcott argues that in concluding a qualitative study it is wise to provide summaries which “allow a review of what you have accomplished in terms of your original statement and purpose.”²²⁷ Following Wolcott’s advice, in this final chapter I begin with (1) a revisit of the most important elements of the literature I reviewed for this dissertation; (2) an overview of advice offered by my interviewees for university policy makers and HR professionals; (3) my recommendations for further avenues of study; (4) final comments; and (5) an overall summary of this dissertation.

Revisiting the Literature

My searches within the literature support the AAUP’s claim regarding a lack of sufficient systematic studies about background check policy in higher education. Due to such a shortfall of peer-reviewed literature on background checks in higher education, I have relied to a large degree on reports that highlight important triggering events that have potentially shaped, influenced, and changed background policy in higher education. Birnbaum’s contribution to my literature review highlights the danger of uncritical

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²²⁷ Harry F. Wolcott, *Writing up Qualitative Research*, 2nd ed. (Thousand Oaks, Calif.: Sage Publications, 2001), 123.

acceptance of background check policy, which can be troublesome if the practice is applied as a formula and without the support of organizational participants. Hughes, White, and Hertz appear to be the leading contributors of directly related literature devoted to the topic of background check policy in higher education. As a result of their survey work, they assert that implementation of more comprehensive criminal background check policies in U.S. higher education needs more careful consideration.

Triggering Events Contributing to Policy 8.1

In my literature review I discussed Cooper, Fusarelli, and Randall's assertion that "triggering events" often shape, influence, and change policy initiatives and societal interests.²²⁸ Triggering events can often cause certain societal anxieties to appear suddenly in the limelight and/or disappear from view due to competing concerns. Thomas Birkland also discusses the importance of these types of events; however, he uses the term "focusing events."²²⁹ Birkland reminds us that these focusing events can (and often do) attach emotional elements that support policy agendas. For example, on a national level, had it not been for the 2001 terrorist attack on the New York World Trade Center, President George W. Bush's promotion of the Patriot Act would perhaps have been more scrutinized regarding the authority it extends over the privacy of U.S. and foreign citizens.

As presented previously, Russ Cappello provided multiple examples of incidents that influenced him to try and persuade his superiors to implement pre-employment background check policy. First, he explained how the 1996 Olympics brought federal background checks to Georgia Tech. Second, he described how multiple parole officers' calls to Georgia

²²⁸ Bruce S. Cooper, Lance D. Fusarelli, and E. Vance Randall, *Better Policies, Better Schools*, 69.

²²⁹ Thomas A. Birkland, *An Introduction to the Policy Process: Theories, Concepts, and Models*, 101.

Tech revealed that current staff had criminal history records. Third, he gave specific examples of how potential faculty were identified as convicted felons during recruitment processes. According to Russ, triggering events like these have an influence over policy change because “this is always the reason why some of these things get put into force.”²³⁰

Russ expressed further that

something like a bus driver maybe was under the influence of drugs and wrecked the bus and killed somebody or assaulted a student or something happened that brought it to a head. It is often the case that policies are the product of unfortunate events. And it’s unfortunate, you know. You don’t put a stoplight in that intersection till somebody dies. And it’s probably somebody that’s important that dies, then you get the stoplight. Other than that, you know, “we don’t have the money for this,” or “that’s too much trouble.”²³¹

Other significant triggering events that resulted in the initiation and revision of Policy 8.1 included (1) the refusal of the Georgia Tech Police department to continue conducting criminal history searches at no charge for the Georgia Tech Office of Human Resources,²³² and (2) the mandate by Erroll Davis and the University System of Georgia in 2007 that all USG institutions adopt a background check policy. These triggering events are significant signs that background check policy at Georgia Tech (and in higher education in general) is not a “management fad” as described by Birnbaum in my literature review. It is my assertion that background check policy will continue to expand in higher education.

²³⁰ Russ Cappello, interview by author, 13 October 2011.

²³¹ Ibid.

²³² This placed the staff of the Office of Human Resources in a difficult position, because for several years background checks were conducted on temporary staff hires. A decision had to be made either to abandon background checks entirely as part of the hiring process or to hire a third-party to perform the service. The decision to hire a third-party created contractual agreements that additionally supported Policy 8.1.

The AAUP and “A Renewed Sense of Proportion”

In the fall of 2006, the AAUP published an updated version of *Policy Documents and Reports*. This tenth edition included the AAUP’s statement “Verification of Trust” regarding background investigations preceding faculty appointments. In this statement the AAUP warns of several concerns that warrant attention. First, these types of searches can be “highly invasive of an applicant’s privacy and potentially very damaging.” Second, “the probative value of criminal records is often small because such records are notoriously imprecise.” Third, the AAUP does recognize that incidents of faculty credential misrepresentation are “not totally foreign in higher education,” but that “such sensational incidents are fortunately few.” And, most important (for this dissertation), the AAUP states that “this interest in background checks has arisen despite the absence of any systematic study of the need for the information such checks might produce.”²³³

One of my main interview questions involved asking my research participants about the AAUP statement. This question was of particular importance because the AAUP is an organization that has a central role and voice in higher education. When I interviewed Dr. Erroll Davis, I had a copy of Dr. Hudson’s letter that he wrote to him, and Dr. Davis did recall the difference in opinion he had with Dr. Hudson and the AAUP.

Dr. Hudson and I had nothing but a wonderful relationship even when we differed on things, and certainly there was no tension and no hostility in our relationship. We would lunch together and in fact, his wife worked for me for a long period of time. I understand their perspectives. I understand it, but as I tell a lot of people, “When you’re responsible, when you’re accountable, you have different perspectives.” And they are not responsible, they are not accountable and so everyone wants to be an advisor, and so I will listen, I will listen to the advice, but the most push back I

²³³ American Association of University Professors, *Policy Documents & Reports*, 51-53. Also, see Matthew W Finkin, Robert C. Post, and Judith J. Thomson, “Verification and Trust,” 113-114.

received was from the faculty at UGA, who wanted to take the view that we're not employees. We're colleagues, we are not employees, and my rejoinder was, "Boy, you know, I hear your concerns about pensions, I hear your concerns about salaries, about working conditions, about benefits. You sure sound like employees to me and so you can't have it both ways."²³⁴

Below I provide each of my other interviewees' responses to the AAUP question.

(Note: because my time with Russ Cappello was limited and our conversation focused extensively on the history behind Policy 8.1 before it became a formal written policy, I was unable to incorporate this question into our interview).

Jean's Response:

Now my interpretation of the statement by the AAUP is that organizations have gone overboard in requesting too much information on prospective candidates for employment, such as credit checks.... I am in agreement that not enough studies have been conducted and more formal studies need to be conducted, like this one, to establish the validity of new programs and policies regarding this subject. On the other hand, we cannot afford to wait for enough studies prior to making decisions that involve the safety and wellbeing of employees.... While the information in the background checks is sensitive, it has become necessary to provide a more desirable workplace.²³⁵

Rick's Response:

I don't know if I am familiar enough to answer.... Yeah, I'm trying to think about how that translates to what we do, thinking specifically about admissions. I'm still not sure if this is the appropriate answer or not, but we're thinking about a professor and competition to be a professor given the number of people graduating with Ph.D.s, and then especially at more prestigious institutions, but really just across the board not only just becoming a professor but a tenure-track professor... the scrutiny

²³⁴ Erroll Davis, interview by author, 01 December 2011.

²³⁵ Dr. Jean Fuller, interview by author, 28 September 2011.

within that is highly, highly competitive, heightened and very sensitive. If I try to translate that to what we do, arguably the same case could be made that the competition for seats in classes, not even as a student but to literally get into a college, has never been under the microscope as much as it is now in America.... Then too, and coupling that with Virginia Tech and all the other places that have had issues, I could see where there would be calls for, needs for, desire to ensure that every piece of the background of someone who was being selected and admitted.... I'm trying to think how to sensitively put this – whether we're parents, alumni, or donors, the stakes of giving an offer of admission to someone who is perceived to not deserve that, whether that be academically or based on character or background, is pretty high. So I think that's how I might kind of extrapolate and translate that over to us.²³⁶

Summary of Revisiting the Literature

In this chapter, I addressed two important themes that emerged in my literature review and within my data analysis. First, the importance of triggering (or focusing) events proved to be very influential to background check policy. As I discussed earlier, the Patriot Act at the federal level (triggered to a large degree by the terrorist attacks of September 11th, 2001) illustrates an example of policy in alignment with our societal acceptance of trading privacies for increased levels of perceived security. Similar to the Patriot Act, the implementation of Policy 8.1 was also influenced by triggering events (at the higher education institution level) as described by my interviewees.

Second, the AAUP's concerns regarding background check policy in higher education has been a central theme throughout this dissertation. Through presentation of my interview with Erroll Davis and Hugh Hudson's letter to Dr. Davis (as well as other responses from my interviewees), I have presented a discussion of the AAUP's concerns that

²³⁶ Rick Clark, interview by author, 27 October 2011.

helps to extrapolate competing arguments regarding background check policy in higher education.

Advice for Other University Policy Makers & HR Professionals

One of my main interview questions was a hypothetical scenario designed to extract my participants' views on providing advice for other university officials or HR professionals considering policy the same as or similar to Policy 8.1. Specifically, the question asked, "Assuming the University of Chicago had no formal background check policy/program in place, what advice would you provide to the Vice President of Human Resources if he/she asked for your counsel?" This question was especially important to the technical dimension of my conceptual framework which consists of considering the "planning, practice, implementation, and evaluation" of policymaking. This question was designed to elicit responses from an evaluative perspective. My conversations with Dr. Jean Fuller surrounding this question were extensive and her responses were:

make sure the policy is fair for all employees within the organization.... make sure there are safeguards in place which provides some wiggle room and flexibility with an oversight committee making the final decisions to hire or not to hire.... It should not be left up to the hiring department or to the employment department of OHR.... that would hopefully help with some checks and balances.²³⁷

In my opinion the amount of information needed prior to making a final employment decision depends largely on the type of work. Okay, for example, in today's environment, many potentially good employees' credit scores have been affected by home a foreclosure which produces a negative credit score. If other aspects in the background check are favorable, the credit score alone should not cause a candidate to be rejected for the position. As far as criminal records are

²³⁷ Dr. Jean Fuller, interview by author, 28 September 2011.

concerned, it depends on the crime itself, how long ago did it occur, and the positive or negative impact of hiring this individual might bring to the organization.²³⁸

Russ' responses to this question were:

Well, it depends on who's reviewing the backgrounds. Some people take a very strict view of the criminal record, and we have to keep certain things in mind. If it's a black person in the South, chances are he could be just as innocent as he could be guilty. At least back when I was coming up, because a black guy really couldn't get a fair shake in the South.²³⁹

The whole idea is to keep the workplace safe. You certainly have a certain amount of responsibility for those in your employ.... To me, litigation is probably second to a safe working environment.... You can always come up with money, but you can't come up with another life. So it's important that you keep your people safe. And that's what it's all about. So I think the university, George Tech, is going in the right direction.²⁴⁰

It is important to note that when I asked Erroll Davis this question his perspective came from his previous role as chancellor of the University System of Georgia. Before he was appointed Chancellor he had a long career in private industry as well.²⁴¹ His advice to the VP of Human Resources at the University of Chicago was:

²³⁸ Ibid.

²³⁹ Russ Cappello, interview by author, 13 October 2011.

²⁴⁰ Ibid.

²⁴¹ At the start of my interview with Dr. Davis I asked him to go on record regarding his role in implementing background checks within the University System, and some detail regarding his career. He stated specifically, "My name is Erroll Davis, I'm the Superintendent of the Atlanta Public School System. Prior to that, I was the Chancellor of the University System of Georgia for five and a half years and during that time I implemented a background check requirement for all new hires in the system. Prior to coming to the university system, I worked in industry for 35-40 years, the last 15 of which were as CEO of Alliant Energy Corporation, which is a New York stock exchange listed company, about three billion in revenues, eight billion in assets, that's headquartered in Madison, Wisconsin." For an extensive account of Dr. Erroll Davis' background and resignation as Chancellor of the University System of Georgia see official USG online announcement at: http://www.usg.edu/news/release/erroll_b._davis_jr._announces_plans_to_retire_as_university_system_head

Well, I would say “you are overdue in having one” and depending upon what sort of push back that you get from the faculty, you can either implement a policy for all new hires going forward which of course will cover everybody through attrition after 30 years or you can bite the bullet and say, “We are going to do it for existing employees,” but that always will cause you some difficulty if you discover something in the background of a person who has been there 20 years and done a wonderful job and not done anything, what do you do?²⁴²

Dr. Davis also elaborated on his rationale to move forward with his decision to implement a USG system-wide background check policy even after protests from several faculty within the USG. He stated,

I think you just have to accept that a college professor, particularly at a research university is, unless they are in the political science department, is usually not up on what’s going on in society. I mean, that’s the reality, that’s the harsh reality; that’s not their job, they are very focused on doing their research and teaching as well. And so I listened, but they have to understand and the HR person needs to understand that you have to protect the institution.²⁴³

When I interviewed Rick, a lot of our conversation focused on student matriculation and admissions screening, so when asking this specific question to Rick, I changed one element. Rick’s question was as follows, “Assuming the University of Chicago had no formal background check policy/program in place, what advice would you provide to the Vice President of Student Admissions if he/she asked for your counsel?” Rick’s response was that:

given that while we may hold nonprofit status, we are talking about millions of dollars a year that our brands bring in and put out, you really can’t risk some of the

²⁴² Erroll Davis, interview by author, 01 December 2011.

²⁴³ Ibid.

bad press that would come by not legitimately screening the students that you're enrolling. And too, so much of the admission process comes down to character traits and what you can bring to campus to positively impact the ethos, and we get that typically through what you've been involved with outside the classroom.²⁴⁴

Due to the fact that Scott Morris recently started his employment at Georgia Tech in January 2011, our conversation was dominated mostly with discussion of his thoughts about the current version of Policy 8.1 (for which he is now directly responsible as the new Associate Vice President for the Office of Human Resources). My interview with Scott centered around this particular interview question and Scott talked a lot about improvements he would like to see in the near future for Policy 8.1, the following of which I discuss below.

Improved Understanding of Need-to-Know and Right-to-Know

Before being employed in higher education, Scott Morris (as well as myself) worked in law enforcement, and he applied his experience as a former police officer when answering my interview questions. Scott believes that higher education professionals do not understand the concept of need-to-know and right-to-know as well as individuals in law enforcement. In brief, the terms need-to-know and right-to-know refer to a professional and ethical obligation law enforcement officers have to their use of sensitive data in the course of their work. Law enforcement officers often access private information through state-wide and national databases. This, often easy access is tempered by the rule of need-to-know and right-to-know. If sensitive data are to be used, a law enforcement officer must have a need-to-know and a right-to-know. For example, during the course of a criminal investigation, access to suspect address, criminal history, phone records, etc. is considered a need and a right to know. In contrast, officers are not permitted to randomly access vehicle

²⁴⁴ Rick Clark, interview by author, 27 October 2011.

license plate information unless a driver is committing a violation or there is reasonable suspicion of criminal behavior.

None of the institutions that I've worked for have very structured need-to-know right-to-know access policies for data and formalized discipline processes for misuse of data. I think higher ed needs to look at that differently... I knew as a police officer that if I utilized information systems to access data that I didn't have a need-to-know and right-to-know that that was a terminable offense. We don't have those here. We don't look at the crime of data access with a similar frame of reference... that adds a layer of protection.²⁴⁵

Collection of Sensitive Data

According to Scott, Georgia Tech and other higher education institutions need improved methods and procedures for collecting sensitive data on employment applicants. More specifically, these methods and procedures should allow applicants to enter their own data securely over the web and without OHR personnel ever having to come in contact with it.

I think the second thing that needs to happen is that we simply need to do a better job of, you know, balancing the collection of data, and I think there are policy implications for how we collect it. Do we create a secure web interface accessible from anywhere, but secure such that we can facilitate the collection at the point of wherever that person is? They're here visiting and you've got your four finalist candidates and I'll come to that point in a second too, but, you know, you sit them at a computer terminal and ask them to fill out the information and that way people in lower level administrative positions can facilitate the collection of information without necessarily being exposed to the sensitive nature of the data.²⁴⁶

²⁴⁵ Scott Morris, interview by author, digital audio recording, Atlanta, GA., 21 September 2011. Our conversation on this topic was fruitful due to our mutual background working as police officers before higher education. I specifically recall my previous training on the importance of (and obligation to) the need-to-know and right-to-know concept in the law enforcement profession.

²⁴⁶ Ibid.

A Clearer Understanding of “Finalist” & “Contingent Offer”

Scott believes that Georgia Tech and its employment applicants need to have a better understanding of what it means to be a “finalist” within a pool of employment candidates. Closely connected with this term is the stage at which a finalist can be extended a “contingent offer.” Scott expressed that these employment terms need to be more clearly understood overall.

The third thing that we need to look at differently - and I limit my comments to here [Georgia Tech] rather than higher ed - is we need to look differently at who we call a finalist candidate... Referencing the experience I had within the police dept, I was extended a contingent offer of employment very early in the process, long before they even got close to selecting me. The reason that they did that was for the purpose of running me through physical tests and being able to examine confidential medical information and those kinds of things. I think the policy reform is really around those areas.... what does a contingent offer of employment mean and why is it extended.... our view of contingent offer of employment is we make a contingent offer to the finalist candidate and what we're really looking for is everybody nodding in the same direction.²⁴⁷

A Model Based on Public Trust

Finally, Scott believes that the law enforcement profession’s overall approach to the hiring process is a good model to emulate in the higher education environment. Within law enforcement, candidates are very clearly made aware of the implications associated with allowing their personal information to be accessed. Also, law enforcement and public higher education institutions have similarities in that both have a vested interest in earning public trust. As Scott explains,

²⁴⁷ Ibid.

I actually think that's a good model because presumably the purpose for that is it's in the interest of public trust and public safety.... I think arguably it could be extended to higher education in that we're the same kind of public institution and we have a fiduciary responsibility to the taxpayers and to the state.... While it isn't public safety, actually it could be a public safety concern within some positions, but there's definitely a public interest that's satisfied through those kinds of things, and so I think that's a good model for us to at least consider and study as we're thinking about policy reform evolution.... I don't think we do a very good job of communicating that this is gonna be an expectation in the process very early. I think we need to do that here. That's probably a piece of advice I would give that we're a public institution. When you apply here, know you're gonna be backgrounded. Here are the parameters of the background check and if you don't choose to do that, know that before you make application.²⁴⁸

Summary of Advice for University Policy Makers and HR Professionals

In summary, all of my interviewees were able to provide insights and considerations for other university policy makers or HR professionals considering background check (or similar) policy for their institutions. According to Jean Fuller, the policy should be clear and concise, but still leave reasonable room for flexibility with the use of a committee for making critical decisions. Critical decision making should not be left up to a single individual. Further, the amount of sensitive data required for a background check request should be directly aligned with related duties of the job vacancy. For example, a credit history check should be required only for positions with a fiduciary responsibility and if a position does not involve operation of a motor vehicle than no driving history record should be required.

According to Russ Cappello, workplace safety needs to be the highest priority and it is important to make sure that the policy does not go overboard with its rules and

²⁴⁸ Ibid.

restrictions. Russ believed, in alignment with Jean's similar recommendation, that too much policy creates risk and lack of flexibility.

Erroll Davis advised that overall higher education is behind the societal curve with background check policy and if your institution does not have a policy it is long overdue. Also, at the very beginning (before implementation) make the critical decision of whether or not to screen all current employees.

Rick Clark's advice related to managing the reputational risk of higher education institutions. The cost of bad press associated with not having a background check policy could have serious consequences if it was determined that an institution was not exercising enough prudence in protecting the safety of its members.

Finally, Scott Morris provided a robust array of considerations. First, higher education institutions need a stronger appreciation of the concepts need-to-know and right-to-know. Law enforcement personnel are very aware that failure to adhere to these rules in their profession is a terminable offense. Second, higher education needs to find a more applicant centered process for collecting sensitive data, one that minimizes the exposure of the data to higher education personnel. Third, higher education needs to communicate better to applicants the definition of "finalist" and what it means to receive a "contingent offer." Fourth, Scott believed that higher education could benefit from the law enforcement model based on public trust, especially since higher education already operates in a similar way.

Recommended Further Avenues of Study

After completing my data collection and analysis, I have found that there are two major areas where further study could be conducted related to this dissertation. The first major area of further study would be a more elaborate look into the privacy v. security debate. The second major area would be the topic of background checks extending beyond the pre-employment arena of higher education and into the student matriculation process. I discuss these two major topics below, but first I offer two potential minor avenues of inquiry that Scott Morris and I agreed would be good follow-up questions for this dissertation.

The Privacy v. Security Debate

As I have mentioned previously, many of the controversies regarding background checks in higher education are centered around, or are related to, privacy and/or security. It is important to note that security and privacy (especially privacy law) are both elaborate subjects. This dissertation focused specifically on a single background check policy at one higher education institution. Therefore, my discussions on security, privacy, and privacy law were limited only to the most relevant aspects of these topics as each related to my study. I recommend further review and examination of privacy, security, and privacy law, especially in regard to potential implications of implementing background checks on students as part of the matriculation process, as discussed below.

Student and Faculty Recruitment

Due to the fact that Scott Morris recently started his employment at Georgia Tech in January 2011, our conversation was dominated mostly with discussion of our thoughts about the current version of Policy 8.1. In our discussion we agreed that it would be interesting to know if the existence of a background check policy has (or could have) an impact on faculty

and/or student recruitment. In regards to faculty, would a background check as part of the employment recruitment process dissuade them from applying? Or would the background check itself send the message that Georgia Tech values the safety and security of its population? Extending the same concept to student (and especially parent) decision-making, does a background check policy for employees provide additional assurance that Georgia Tech's campus is a safe environment? Additionally, if there is an effect on decision-making in this area, how might this economically impact an institution? Does a background check policy for higher education employees influence the buying behavior of students and/or parents (and if so how much)?

Background Checks on Students

The Paul Kruger, John Veller, and Amy Bishop incidents have influenced higher education officials either to adopt or at least to consider adopting stringent pre-employment background check policies. Because background checks have increased for university staff and faculty members, is it possible (especially due to the recent incidents of student violence at Virginia Tech and Northern Illinois University) that background checks may increasingly become part of the matriculation process? My readings within the literature and discussions with my interviewees indicate that this will be a future topic of increased debate.

In my interview with Russ he expressed great concern regarding students. "My problem has always been with students because we have students from all over the world and they're treated like potted plants."²⁴⁹ Russ further expressed his concerns relating to the access students are given at Georgia Tech, especially within areas of high security. "There are certain things that they can't work on. Super computers, some areas of nuclear, they're

²⁴⁹ Russ Cappello, interview by author, 13 October 2011.

just not allowed to be there.”²⁵⁰ When I asked Russ why he felt this way, he explained a specific instance when

we had one post doc from a foreign country and I got a call from the PI [Principal Investigator] and advisor to this student saying that there’s this post doc, asking me if he could terminate his employment. And I asked why, and he said, “Well, he’s working on something very volatile.” And I said, “Well, what do you mean by volatile?” And he said, “Well, I really can’t divulge to you what it is, but it’s something that could cause great harm and I think he’s about to go off deep end.” And I said, “Are you telling me this guy can make a bomb?” And he said, “Well, okay. I didn’t want to say that, but yes.”²⁵¹

In my interview with Rick we discussed the current preventative measures that Georgia Tech uses to screen student enrollment applications. On the application there is a question that asks if the applicant has ever been convicted of a criminal offense; however, actual criminal records are not used when making matriculation decisions. Rick explained that

even the way we do this now which is a self-reported background, we don’t do formal backgrounds or paid background checks, but we do have prescribed Board of Regents questions where students on their honor are offering information, which is solicited, and then we follow up when necessary. And a sizable percentage of students have something that comes across in that.²⁵²

In a follow-up question, I asked Rick to provide an example of an incident where questionable information was found in an admissions application and he responded with

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Rick Clark, interview by author, 27 October 2011.

probably the one that jumps to mind the most quickly was just a few years ago where we had a student who indicated that, yes, they were currently being charged with a felony.... Although he kind of found a way to downplay that a little bit even though answering “Yes,” and then expounding on that. But it turned out the student had semi-automatic weapons and ninja masks and some real quote “black plastic” in the trunk of his car on school property, and the police found this. And that occurred during the junior year of high school. The student was expelled, was finishing up in a home-school kind of situation. Very, very solid academically, but yet a real threat to campus.... If we hadn’t asked the question and – well, of course there’s part of you that says, “Has there been enough separation of time? Was that an anomaly?” But again, what do you risk by putting a student like that on campus; given all the other choices you have of students to admit.²⁵³

According to Scott, he believed that background checks are not appropriate for student enrollment applications. “I’m not sure I would be a supporter of a background check policy for entrance into higher education because of the access issues.”²⁵⁴ Erroll disagreed with Scott and expressed, “I’m increasingly gravitating toward the view that if students are going to be treated as adults, then adults are subject to background checks.”²⁵⁵ Moving forward, Erroll believed that “the real question with the kids is who’s going to pay for it.”²⁵⁶ University admissions officials would need to decide when a background check would be conducted during the application process. This decision could have serious financial implications, especially for universities that receive thousands of applicants and only admit a small percentage of the total applications received. Erroll recommended potentially using something similar to a “student background check clearing house” system

²⁵³ Ibid.

²⁵⁴ Scott Morris, interview by author, 21 September 2011.

²⁵⁵ Erroll Davis, interview by author, 01 December 2011.

²⁵⁶ Ibid.

and having a third party supply the background check information. Similar to GRE/SAT scores or transcript dissemination, “Maybe there should be a universal background check for students, and they should pay it one time and then those results can be sent to schools.”²⁵⁷

While this idea may be a viable one, Rick warned, “If we didn’t admit every kid who got busted with a six-pack at prom, we wouldn’t have a class”²⁵⁸

Early Signs of Background Checks on Students

Recalling from my literature review, there is evidence of opinions steering toward considering background checks as part of the higher education matriculation process. In a 2008 report requested by Deval Patrick, Governor of Massachusetts and submitted to the Massachusetts Department of Higher Education it states “Colleges must respond proactively to the risk, as parents rightly expect a special level of care for their sons and daughters.”²⁵⁹

Recommendation number 19 of this same report (within the policies and procedures category) advocates, “graduate student applicants should be directly queried regarding any unusual academic histories, as well as criminal records and disciplinary actions.”²⁶⁰

Use of extensive background checks in higher education has already expanded to professional school admissions. Jon Weinbach reports “business schools have taken the lead in cracking down.” Corporate security firm Kroll initiated a Global Academic Verifications division in 2003 in response to incidents of admissions fraud. “[Kroll] now does resumé

²⁵⁷ Ibid.

²⁵⁸ Rick Clark, interview by author, 27 October 2011.

²⁵⁹ Daniel O’Neill, James F Fox, Roger Depue, and Elizabeth Englander, *Campus Violence Prevention and Response: Best Practices for Massachusetts Higher Education*. 2008. See full report available at: <http://www.mass.edu/library/Reports/CampusViolencePreventionAndResponse.pdf>

²⁶⁰ Ibid., v.

checks on accepted students for about 20 business schools, including Wharton and Columbia.”²⁶¹

Dana Forde reported that in early 2006 the Association of American Medical Colleges (AAMC) approved use of a national system for background checks on student applicants. “State legislators see the system as an added protection for vulnerable patients.” Others, however, fear that a national background check system may disproportionately affect minority medical school applicants. Some AAMC officials have acknowledged that a potentially biased criminal justice system “could mean a disproportionate high number of minorities will be scrutinized” or the background check will deter minorities from even applying. If this were the case, “it would be a major setback for medical schools struggling to increase minority enrollment.” According to Dr. Robert Sabalis, associate vice president for student affairs and programs at AAMC, criminal background checks are “needed to comply with state and hospital requirements” and review of the record will focus on offenses committed as adults, not juveniles. AAMC will present guidelines and potential best practices, but each medical school “will develop its own policies and procedures for determining which past offenses raise concern.”²⁶²

Background Checks and Equal Employment Opportunity

As recently as April 2012, the U.S. Equal Employment Opportunity Commission (EEOC) released the updated government document *Enforcement Guidance on the Consideration of Arrest and Conviction and Conviction Records in Employment Decisions Under Title VII of the Civil*

²⁶¹ Jon Weinbach, "The Admissions Police," *Wall Street Journal - Eastern Edition* 249, no. 80 (2007): W1-W10.

²⁶² Dana Forde, "Criminal Background Checks to Become Part of Medical School Application Process," *Diverse: Issues in Higher Education* 23, no. 19 (2006): 15.

Rights Act of 1964.²⁶³ According to the EEOC, the 2012 *Enforcement Guidance* is designed to “consolidate and supersede the commission’s previous 1987 and 1990 policy statements on this issue” and act as “a resource for employers, employment agencies, and unions covered by Title VII.”²⁶⁴ Applying analyses of Title VII in relation to the use of criminal history records when making employment eligibility decisions is a “well-established” practice according to the EEOC. Fundamental background check policy considerations endorsed by the 2012 *Enforcement Guidance* include the following. (1) “Arrest records are not probative of criminal conduct.” (2) Employers should focus on convictions because convictions “are considered reliable evidence that underlying criminal conduct occurred.” (3) “A policy or practice that excludes everyone with a criminal record from employment will not be job-related and consistent with business necessity and therefore will violate Title VII, unless it is required by federal law.” Finally, (4) national data support “a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.” This is based on “a finding that criminal record exclusions have a disparate impact based on race and national origin.”²⁶⁵ Therefore, any individual employment exclusion with a disparate impact must demonstrate that the decision was job-related and consistent with business necessity.

²⁶³ Equal Employment Opportunity Commission, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Washington, D.C.: GOP, 2012), See full report at: http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm. Internet; accessed 05 May 2012.

²⁶⁴ Equal Employment Opportunity Commission, *Questions and Answers About the EEOC’s Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* (Washington, D.C.: GOP, 2012), 2. See Q&A online EEOC Document at: http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm Internet; accessed 05 May 2012.

²⁶⁵ Ibid, 2. The EEOC 2012 Guidance specifically references data that reveals “Arrest and incarceration rates are particularly high for African American and Hispanic men. African American and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population. Assuming that current incarceration rates remain unchanged, about 1 and 17 White men are expected to serve time in prison during their lifetime; by contrast, this rate climbs to 1 in 6 for Hispanic men; and 1 in 3 for African American men.” 3.

According to Leslie Silverman, former vice chair and a previous commissioner of the EEOC, this 2012 *Enforcement Guidance* does not introduce any new roadblocks that prevent employer's access to criminal history records; rather, the guidance makes an attempt to offer employers a more detailed understanding of how "to embrace the long-standing three-factor test identified by the courts in *Green v. Missouri Pacific Railroad Company*, when evaluating criminal history." These three factors include (1) "the nature or gravity of the offense or conduct;" (2) "the time elapsed since the conviction and/or completion of sentence;" and (3) "the nature of the job sought or held."²⁶⁶

The EEOC makes the claim that the "*Green Factors*" at the present time and in the "absence of a validation study that meets the Uniform Guidelines' standards" are to be utilized as "the starting point for analyzing how criminal conduct may be linked to particular positions." Further, and specifically one of the main reasons why I advocate further inquiry into the topic, the EEOC recognizes that

although there may be social science studies that assess whether convictions are linked to future behaviors, traits, or conduct with workplace ramifications, and thereby provide a framework for validating some employment exclusions, such studies are rare at the time of this [EEOC Guidelines] drafting.²⁶⁷

²⁶⁶ Leslie Silverman, *What HR Professionals Need to Know About the EEOC's New Guidance on Criminal Background Checks*. Alexandria, VA: Society for Human Resource Management, 2012. SHRM Special Report. 1

²⁶⁷ Equal Employment Opportunity Commission, *Consideration of Arrest and Conviction Records*, 15. The single study referenced in the 2012 *Enforcement Guidance* connected with this concern reports that "contrary to expectations, criminal convictions that occurred prior to entering the workforce were unrelated to counterproductive work behaviors." For further details see: Avshalom Caspi, Brent W. Roberts, Peter D. Harms, and Terri E. Moffitt, "Predicting the Counterproductive Employee in a Child-to-Adult Prospective Study," *Journal of Applied Psychology* 92, No.5 (2007): 1427-1436.

Importance of “Generalized Concern About Security”

Leslie Silverman, in her assessment of the EEOC 2012 *Enforcement Guidance*, points out another shifting characteristic of background checks in that employers are now increasingly responsible for providing evidence-based rationales for their policy decisions. The EEOC recognizes that employment exclusions that comply directly with a federal law will not violate Title VII. Occupational licenses, registration, and a security clearance are provided as examples. The EEOC warns that if a background check policy practice “exceeds the scope of a federally imposed restriction,” the employer may be liable if it “cannot provide evidence justifying an enhanced policy.” An example provided by the EEOC articulates a scenario in which a financial institution complies with a federal standard of not hiring any applicant who has a criminal conviction within the past 10 years. If the financial institution decides to extend the time frame to 20 years, it “must be able to offer evidence showing that there is an elevated likelihood of committing crimes for someone who has been crime-free for more than 10 years.” The rationale for enhanced policies of this type cannot be based solely on a “generalized concern about security.”²⁶⁸

Final Remarks

At this stage of background check policy development in higher education I share many of the AAUP’s concerns expressed in 2004, especially the concern relating to a lack of systematic studies of the need for the information background checks produce. In my literature review I discussed Deborah Stone’s “dimensions of need” relating to security policy. According to Stone, regulatory activity related to safety often focuses on “potential future needs.” These needs “often have a political potency far greater than actual needs,

²⁶⁸ Leslie Silverman, *What HR Professionals Need to Know About the EEOC’s New Guidance*, 2.

because fear of the unknown plays a bigger part.” Further, Stone advocates, “The human imagination is capable of creating infinite terrors, and terror explains why there is often an emotional fervor to arguments about this type of need.”²⁶⁹ I find a close connection between Stone’s warning of policies “based on a condition of being at risk” and the EEOC’s cautionary claims about background check policy based on a “generalized concern about security.” Beyond all the emotional support for background check policy, it is important to consider the possibility that these policies are an over-reaction related to our fear and subsequent need to protect against future (potential) harms that have not yet happened.

Would a student admissions background check have prevented Seung-Hui Cho from killing 32 people on Virginia Tech’s campus? There is a strong indication that it would not, given that Cho did not have a criminal history record. If Amy Bishop, hired at the University of Alabama in 2003, was subjected to the university’s, relatively new, background check policy (released in August 2006), would it have prevented her from shooting several of her campus colleagues in 2010? As discussed in my literature review, Dr. Bishop was implicated in previous crimes; however, she was not charged. Had Dr. Bishop actually been charged with multiple violent crimes, a pre-employment background check may have influenced the University of Alabama’s hiring decision. According to Ray Garner, a spokesman for the University’s campus in Huntsville, the university knew nothing of Dr. Bishop’s violent past when she was hired, and there were no indications of trouble in her personnel file.

On the other end of the spectrum, is it possible that universities utilizing background check policy are excluding (or terminating) good candidates with an acceptable low risk for crime or violence? Paul Krueger’s career appeared to be experiencing upward momentum

²⁶⁹ Deborah A. Stone, *Policy Paradox: The Art of Political Decision Making*, 95.

with a history of progressively higher-level academic appointments at increasingly prestigious institutions. If Paul Krueger was allowed to continue his employment with Penn State University, is it possible that he could have made significant contributions to academia, even after he paid his debt to society for his teenage criminal record? As discussed previously, the EEOC now strongly recommends considering the importance of the time that has elapsed since the occurrence of the criminal offense as well as the subsequent conduct and/or completion of a sentence. In support of these considerations, the EEOC, in its 2012 *Enforcement Guidance* cites several studies demonstrating that the risk of recidivism declines over time and individuals with criminal histories can eventually pose the same level of risk as an employee with no record of criminal history.

In conclusion, I understand how, and why, background check policy has grown and solidified into a strong presence in the higher education environment. However, where is the empirical evidence demonstrating that background check policy actually makes campuses safer? If there truly is an absence of such evidence, how do we measure the effect background checks may have in preventing campus crime and violence? Is it possible to empirically demonstrate an increase in safety, and if not, have we simply created an illusion of safety for our campus communities? There is a need to find a more reasonable level of historicity for background check policy in higher education. Before we increase financial investments into background check policy or allow it to expand any further, especially within the student matriculation process, I recommend follow-up studies that will help us further understand its empirical validity. I believe a step in the right direction would be further inquiries that would perhaps connect data between campus police and human resource departments. I do agree that background check policy *may* contribute to safer campus communities; however, I remain highly concerned regarding the amount of assumption I

have encountered throughout this study indicating that background check policy actually *does* prevent campus crime and violence.

Dissertation Summary

Using four specific questions to guide my literature review,²⁷⁰ I identified that very little literature has been published specifically about background check policy and practice within higher education, supporting several of the AAUP's claims in its formal statement on background checks, "Verification of Trust." Most important, I found significant merit in the AAUP's warning that "this interest in background checks has arisen despite the absence of any systematic study of the need for the information such checks might produce."²⁷¹

In response to this lack of systematic studies, my study broadly addressed the following: within Georgia Institute of Technology, what important documented campus events influenced and challenged the campus to consider, adopt, modify, and improve a formal background check policy? Through a constructivist lens and under the iterative tradition this policy analysis addressed my research question using descriptive and evaluative coding of four types of documents associated with Policy 8.1. As my coding progressed, I categorized codes that share similarities, threading them into groups that logically and intuitively fit together. Working with these categories/groups, I searched for patterns and emerging themes through analytic memo writing. This allowed me to structure a re-creation of the experiences and challenges that influenced related constituents of Policy 8.1 to

²⁷⁰ (1) Are background checks in higher education a policy management fad that will reach a peak and then die out or is the policy practice here to stay? (2) Privacy and security, why are both important to the study of background check policy? (3) What have been significant societal changes and/or events fueling controversies about background check policy in higher education? (4) What are the most important, significant, and reliable studies that have contributed to the study of background check policy in higher education?

²⁷¹ Finkin, Post, and Thomson, "Verification and Trust," 113-114.

consider, adopt, modify, and improve formal background check policy. This study offers a documented experience for higher education policy makers and HR professionals at other universities to use as an analogous situation in order to formulate more informed decisions regarding the use or non-use of same or similar policy. Through this study I have also identified that further research is warranted in the areas of privacy v. security (especially privacy law), equal employment opportunity, background check policies based on a general concern for security, and the blossoming debate surrounding whether or not more comprehensive background checks should be included in student matriculation.

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APPENDIXES

APPENDIX A



Georgia Tech Background Check Invoicing

	2005	2006	2007	2008	2009	2010	2011
Jan		\$2,432.40	\$2,600.80	\$5,283.70	\$5,880.85	\$530.00	\$135.50
Feb		\$2,739.50	\$3,008.05	\$5,663.45	\$5,727.25	\$387.00	\$238.50
Mar		\$3,512.35	\$5,183.15	\$4,641.90	\$9,542.85	\$756.00	\$371.00
Apr		\$3,723.50	\$4,205.50	\$4,963.50	\$5,426.35	\$669.50	\$1,216.50
May		\$6,563.05	\$3,933.60	\$6,680.75	\$7,000.55	\$566.50	\$325.00
Jun	\$59.85	\$6,943.95	\$5,572.55	\$8,135.10	\$9,099.60	\$629.50	\$987.50
Jul	\$1,475.45	\$6,412.10	\$5,769.80	\$8,843.05	\$8,675.10	\$373.00	\$639.00
Aug	\$1,693.25	\$3,977.75	\$4,227.65	\$6,737.10	\$9,393.70	\$457.50	\$1,050.50
Sep	\$4,211.35	\$5,761.10	\$4,965.75	\$7,125.60	\$9,558.55	\$775.50	\$804.00
Oct	\$3,278.65	\$4,434.75	\$5,121.05	\$7,091.75	\$7,533.90	\$742.00	\$742.00
Nov	\$3,316.30	\$5,558.85	\$6,910.70	\$5,626.15	\$3,351.40	\$477.00	
Dec	\$4,018.20	\$3,992.05	\$5,031.30	\$4,615.35	\$347.50	\$318.00	
Total	\$18,053.05	\$56,051.35	\$56,529.90	\$75,407.40	\$81,537.60	\$6,681.50	\$6,509.50
Average	\$2,579.01	\$4,670.95	\$4,710.83	\$6,283.95	\$6,794.80	\$556.79	\$650.95



Georgia Institute of Technology Pricing overview

7 Year Due Diligence Package - \$22.95

Includes:

- National Social Security Search (NSSS)
- 1 Criminal County or Statewide search
- Multi-State Criminal History Search
- Multi-State Sex Offender Search
- OFAC Terrorist Watch List Search

Services	Ala Carte Pricing	Fee
NSSS (NATIONAL SOCIAL SECURITY NUMBER SEARCH)		\$ 3.00 Each
COUNTY CRIMINAL HISTORY		\$12.00* Per Jurisdiction/Per Name
STATEWIDE CRIMINAL HISTORY		\$12.00* Per Jurisdiction/Per Name
FEDERAL CRIMINAL HISTORY		\$12.00* Per Jurisdiction/Per Name
MULTI-STATE CRIMINAL HISTORY SEARCH (INCLUDES MSSOS)		\$ 8.00 Per Name
MULTI-STATE SEX OFFENDER SEARCH (IF ORDERED SEPARATELY)		\$ 3.00 Per Name
EMPLOYMENT VERIFICATION (BASIC RESEARCH)		\$ 9.00* Per Employer
EMPLOYMENT VERIFICATION (EXPANDED RESEARCH)		\$ 12.00* Per Employer
EDUCATION VERIFICATION		\$ 9.00* Per Institution
PROFESSIONAL LICENSE VERIFICATION		\$12.00* Each
CREDIT HISTORY		\$ 7.00 Per Bureau
DRIVING HISTORY		\$ 2.75* Each
CIVIL COURT SEARCH		\$25.00* Per Jurisdiction/Per Name
WORKER'S COMPENSATION HISTORY		\$12.00* Per State
PERSONAL REFERENCES (PACKAGE OF UP TO 4 REFERENCES)		\$35.00 Per Name
DRUG SCREENING 5 PANEL URINE SCREEN		\$33.00 Per Test
INSTANT DRUG TESTING (MINIMUM ORDER OF 25)		\$12.00 Per Test
DATA ENTRY FEE FOR FAX USERS		\$ 3.00** Per Name

*NOTE: All prices are subject to out of pocket mandatory fees and expenses such as registry fees, school transcripts, court fees, state fees and 900# fees to verify employment or education.

**NOTE: Each request submitted by fax is subject to the "Data Entry Fee For Fax Users"

APPENDIX B



Applicant Screening Statistics Georgia Institute of Technology

Date: 09-Dec-11
Account No: 101-100467
Billing Code(s): All

Report Range: 01/01/05 - 12/31/05
Turnaround Average: 1.18 Days

Criminal History Searches

777	Total Applicants Searched:
1658	Total Jurisdictions Searched:
2.13	Average jurisdiction per Applicant

Search Results

		<u>% of Applicants</u>
675	Applicants with No Record	87%
102	Applicants with Records	13%

Record Information

		<u>% of all Records</u>
60	Misdemeanor Records	59%
28	Felony Records	27%
14	Unclassified Records	14%
414	Total Number of Charges for all Applicants	

Crime Charge Categorization

		<u>% of all Records</u>
72	Non-Violent	17%
87	Violent	21%
37	Fraud	9%
64	Traffic	15%
48	Theft	12%
51	Drug	12%
14	Sex Offenses	3%
41	Other	10%

* These felony records may also include Misdemeanor records on the applicant profile

Confidential Information provided by



APPENDIX C



Applicant Screening Statistics Georgia Institute of Technology

Date: 09-Dec-11
Account No: 101-100467
Billing Code(s): See Detailed Page

Report Range: 01/01/06 - 12/31/06
Turnaround Average: 2.22 Days

Criminal History Searches

1402	Total Applicants Searched:
3325	Total Jurisdictions Searched:
2.37	Average jurisdiction per Applicant

Search Results

		<u>% of Applicants</u>
1203	Applicants with No Record	86%
199	Applicants with Records	14%

Record Information

		<u>% of all Records</u>
119	Misdemeanor Records	60%
42	Felony Records	21%
38	Unclassified Records	19%
601	Total Number of Charges for all Applicants	

Crime Charge Categorization

		<u>% of all Records</u>
72	Non-Violent	12%
101	Violent	17%
60	Fraud	10%
134	Traffic	22%
102	Theft	17%
63	Drug	10%
7	Sex Offenses	1%
62	Other	10%

* These felony records may also include Misdemeanor records on the applicant profile

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APPENDIX D



Applicant Screening Statistics Georgia Institute of Technology

Date: 09-Dec-11
Account No: 101-100467
Billing Code(s): All

Report Range: 01/01/07 - 12/31/07
Turnaround Average: 1.69 Days

Criminal History Searches

1377	Total Applicants Searched:
3291	Total Jurisdictions Searched:
2.39	Average jurisdiction per Applicant

Search Results

		<u>% of Applicants</u>
1192	Applicants with No Record	87%
185	Applicants with Records	13%

Record Information

		<u>% of all Records</u>
139	Misdemeanor Records	75%
31	Felony Records	17%
15	Unclassified Records	8%
638	Total Number of Charges for all Applicants	

Crime Charge Categorization

		<u>% of all Records</u>
90	Non-Violent	14%
100	Violent	16%
28	Fraud	4%
160	Traffic	25%
90	Theft	14%
83	Drug	13%
4	Sex Offenses	1%
83	Other	13%

* These felony records may also include Misdemeanor records on the applicant profile

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APPENDIX E



Applicant Screening Statistics Georgia Institute of Technology

Date: 09-Dec-11
Account No: 101-100467
Billing Code(s): All

Report Range: 01/01/08 - 12/31/08
Turnaround Average: 1.53 Days

Criminal History Searches

1631	Total Applicants Searched:
3991	Total Jurisdictions Searched:
2.45	Average jurisdiction per Applicant

Search Results

		<u>% of Applicants</u>
1469	Applicants with No Record	90%
162	Applicants with Records	10%

Record Information

		<u>% of all Records</u>
121	Misdemeanor Records	75%
33	Felony Records	20%
8	Unclassified Records	5%
536	Total Number of Charges for all Applicants	

Crime Charge Categorization

		<u>% of all Records</u>
67	Non-Violent	13%
67	Violent	13%
13	Fraud	2%
175	Traffic	33%
55	Theft	10%
70	Drug	13%
8	Sex Offenses	1%
81	Other	15%

* These felony records may also include Misdemeanor records on the applicant profile

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APPENDIX F



Applicant Screening Statistics Georgia Institute of Technology

Date: 09-Dec-11
Account No: 101-100467
Billing Code(s): All

Report Range: 01/01/09 - 12/31/09
Turnaround Average: 1.54 Days

Criminal History Searches

1387	Total Applicants Searched:
4146	Total Jurisdictions Searched:
2.99	Average jurisdiction per Applicant

Search Results

		<u>% of Applicants</u>
1280	Applicants with No Record	92%
107	Applicants with Records	8%

Record Information

		<u>% of all Records</u>
83	Misdemeanor Records	78%
19	Felony Records	18%
5	Unclassified Records	5%
310	Total Number of Charges for all Applicants	

Crime Charge Categorization

		<u>% of all Records</u>
41	Non-Violent	13%
40	Violent	13%
14	Fraud	5%
92	Traffic	30%
19	Theft	6%
37	Drug	12%
4	Sex Offenses	1%
63	Other	20%

* These felony records may also include Misdemeanor records on the applicant profile

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APPENDIX G

Interview Preparation Checklist

- ✓ Selection of Interviewee: _____ Date & Location of Interview: _____
- ✓ Create customized consent form (pre-interview)
- ✓ Start by asking if it is okay to record conversation for accuracy of reporting (also to record consent discussion)
- ✓ Briefly explain study/main research purpose (summarized below)
- ✓ Ask if I have permission to use interviewee name or if a pseudo name is preferred
- ✓ If any question is not understood or is unclear please feel free to ask for clarification
- ✓ If there are any questions I ask that you do not feel comfortable answering simply state as such
- ✓ If at any time I am taking notes please do not take my brief lack of eye contact as disinterest
- ✓ Indicate that I will provide a copy of the consent

Purpose of the Study

The main purpose of this study will be to investigate the history and experiences of Georgia Tech's adoption of background check policy with particular emphasis on what was learned and improved as the policy process evolved and changed. This will be achieved through interviewing potential relevant constituents associated with this policy who are willing to volunteer for this study. In conjunction with these interviews additional data for this study will include collection and analysis of all available/related official policy documents associated with Georgia Institute of Technology's Pre-employment Background Check Program. Data collected and analyzed through these interviews and official policy documents will assist in creating a documented vicarious experience for higher education policy makers and HR professionals at other universities to use as an analogous situation in order to formulate more informed decisions regarding the use or non-use of same or similar policy.

List of Interview Questions/Notes

***Don't forget to** take notes for further follow-up and use probe questions to help steer the interview (Continuation, Elaboration, Clarification, Steering, Sequence, Evidence, and Slant probes p. 164-171 of Rubin & Rubin)

- What is your affiliation (if any) with Georgia Tech, the University System of Georgia, or the field of HR Management? Maybe ask 'why you think I chose you as a participant for this study?'
- Can you describe Georgia Tech's culture and structure? Within this culture/structure who stands (or stood) to benefit from Policy 8.1.
- What do you think are the main reasons why extensive pre-employment background checking (which includes obtaining sensitive information such as criminal records and credit histories) has become more accepted in general (meaning not just in the higher education environment)?
- The American Association of University Professors, in 2004, called for 'a renewed sense of proportion' regarding obtainment of highly sensitive information (such as criminal records) in determining employment eligibility. What are your thoughts about this statement?
 - o The AAUP also claimed, in 2004, that not enough formal studies have been conducted to warrant making policy decisions that revolve around use (or misuse) of such sensitive information in employment decisions. Do you think there have been significant policy improvements since 2004 that would help ease the AAUP's concerns?
- Assuming that the University of Chicago had no formal pre-employment background check policy/program in place, what advice would you give to the vice president of human resources if he/she asked for your counsel?
 - o When a university considers adopting same or similar policies and programs what are the most challenging considerations to take into account and what are some strategies to manage those challenges?
- Use of Background checks has begun to extend beyond employment and into higher education matriculation, what kinds of implications do you think this can or will have for higher education? (Access, Privacy, etc.)

****Was there any particular question you feel I should have asked or that you feel would be important for me to consider?**